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Global Mobility Handbook - 2011 Edition

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Global Mobility Handbook - 2011 Edition

Abstract

[Excerpt] The global movement of employees is essential to multinational organizations doing business in different countries. Getting the right people to the right places at the right time with proper support in a lawful manner is critical to the success of global businesses. Human resource professionals and corporate counsel are confronted with a maze of legal issues in multiple countries that must be considered before moving employees across borders.

When can they go? How long can they stay? What can they do while there? How can they be paid? What happens to their employment benefits during the trip? Who will be the employer while abroad? Which countries laws will apply? What are the tax consequences to the employer and the employee? What about accompanying family members?

These issues confront employers dealing with both short-term business travelers, as well employees on long-term assignments. This is a global mobility handbook to help guide you.

Keywords

globalization, human resources, employees, mobility, Baker & McKenzie

Comments

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Please note: This is the *2011* edition of the Global Mobility Handbook, not the 2010 edition as stated on the title page.

Global Mobility Handbook

2010 Edition

Special Edition in support of the important work
of the International Organization of Employers



BAKER & MCKENZIE

Global Mobility Handbook

Baker & McKenzie

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Related Publications

Baker & McKenzie's ***Bakerimmigration.com*** web site provides links to current articles, practice group members, and other resources for global mobility professionals.

Baker & McKenzie's **Global Migration & Executive Transfers Update** is a quarterly publication focused on global mobility issues.

Baker & McKenzie's **Global Migration & Executive Transfers Alert** is a periodic publication providing timely information on new developments in the global mobility arena.

Baker & McKenzie's **The Global Employer** is a quarterly publication covering labor, employment, employee benefits, and immigration topics of interest to multinational employers in all of the major jurisdictions of the world.

Baker & McKenzie's **Structuring International Transfers of Executives** presents an in-depth discussion of compensation issues for expatriates.

Baker & McKenzie's **Worldwide Guide to Termination, Employment Discrimination & Workplace Harassment Laws** and **Worldwide Guide to Trade Unions & Works Councils** provide useful information for helping employers manage global business change or expansion.

For further details on any of the information in this handbook or to obtain copies of any of the related publications listed above, please contact either of the editors, your Baker & McKenzie contact partner, any of the contributing lawyers listed on the following pages, or any of the Global Migration and Executive Transfers professionals listed at ***Bakerimmigration.com***. Further details on the firm, our people and our practice may be found at ***www.bakermckenzie.com***.

About the International Organization of Employers (“IOE”)

Headquartered in Geneva, the International Organization of Employers (“IOE”/“OIE”), is long recognized as the only organization at the international level that represents the interests of business in the labour and related social policy fields. Today, it consists of 147 national employer organizations from 140 countries from around the globe.

The mission of the IOE is to promote and defend the interests of employers in international fora, particularly in the International Labour Organization (“ILO”), the oldest United Nations body, and to this end works to ensure that international labour and social policy promotes the viability of enterprises and creates an environment favourable to enterprise development and job creation. At the same time it acts as the Secretariat to the Employers’ Group at the ILO International Labour Conference, the ILO Governing Body and all other ILO-related meetings.

The IOE is the permanent liaison body for the exchange of information, views and experience among employers throughout the world. It acts as the recognized channel for the communication and promotion of the employer point of view on labour and related social policy issues, to all United Nations agencies and other international organizations.

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Editors' Note

This handbook is a product of the efforts of numerous lawyers throughout Baker & McKenzie and selected local professionals at other firms, including the contributors listed on the following pages. The editors are extremely grateful to these knowledgeable lawyers for their work and keen interest to provide readers with a clearer appreciation of the business and legal considerations associated with global mobility assignments.

We want to acknowledge the legacy of retired partner William Kuo. Bill laid the foundation for our global practice and this publication over the many years that he led efforts to develop and publish the firm's *Immigration Manual*.

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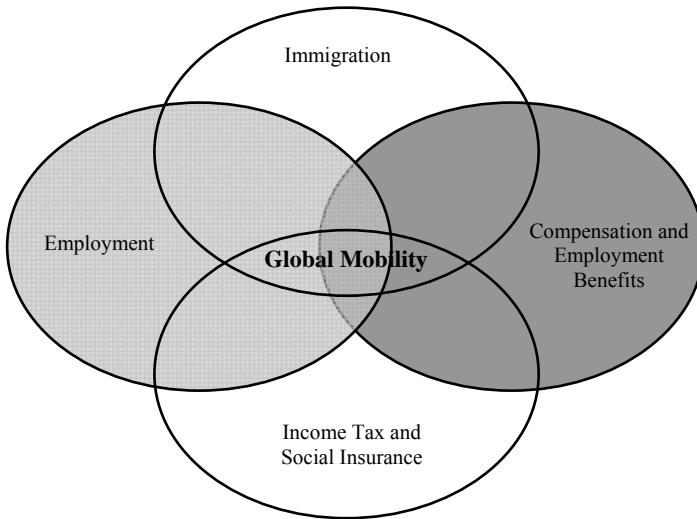
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Section 1 Introduction



Introduction

The global movement of employees is essential to multinational organizations doing business in different countries. Getting the right people to the right places at the right time with proper support in a lawful manner is critical to the success of global businesses. Human resource professionals and corporate counsel are confronted with a maze of legal issues in multiple countries that must be considered before moving employees across borders.

When can they go? How long can they stay? What can they do while there? How can they be paid? What happens to their employment benefits during the trip? Who will be the employer while abroad? Which countries laws will apply?

What are the tax consequences to the employer and the employee? What about accompanying family members?

These issues confront employers dealing with both short-term business travelers, as well employees on long-term assignments. This is a global mobility handbook to help guide you.

The Global Mobility Handbook

The next section of this handbook identifies the key global mobility issues to consider regardless of the countries involved. Although the issues are inevitably intertwined, the chapters separately deal with immigration, employment, compensation and employee benefits, global equity programs, and income taxes and social insurance. The final section is organized by country. For each country, this handbook provides an executive summary, identifies key government agencies, and explains current trends before going into detail on vis as appropriate for short-term business travel, training, and employment assignments. Other comments of interest to global human resource staff are also provided.

Global Labor, Employment and Employee Benefits

There is often a gap between business necessity and practical reality when it comes to moving executives and other personnel to new countries. You have to anticipate and deal effectively with a host of interconnected legal issues and individual concerns.

Baker & McKenzie offers comprehensive legal advice on executive transfers – delivered locally around the world. We help employers plan and implement global transfers and provide on-site coverage to companies and employees in most major business communities around the globe.

Our network of Global Migration, Employment, International Executive Mobility, Global Equity Services, and Taxation lawyers assists both pre- and post-transfer to ensure that employment contracts are complete and enforceable, that employee benefits meet needs and relevant legal requirements, and that tax planning is sound and defensible. Our knowledgeable professionals are qualified and experienced in the countries where you do business. This combines to give us the unique ability to develop and implement comprehensive global migration strategies and solutions to address the many needs of executive transfers globally.

Global Migration Services

Client care, including timely alerts on major changes in global mobility, immigration law and practice, quarterly newsletter outlining global developments, and regular seminars and workshops on a broad range of issues:

- **Workplace compliance**, including counseling, trainings, audits and litigation defense related to worksite enforcement and related employer initiatives
- **Advocacy** on legislative reforms and regulatory changes, and agency practices around the world
- **Design and implementation** of programs to accept immigrant investors, and schools and training programs to accept foreign students
- **Coordination** among members of our global team to obtain visas, residence and work permits from consular offices or to execute transfers to the countries where you do business
- **Transfer of staff** to existing and new multinational operations, including employees with specialist and technical

skills, executives and managers and new employees hired from overseas

- **Large-scale transfers**, including managing the immigration consequences of reorganizations, mergers, acquisitions, RIFs, redundancies, and related restructuring
- **Transfer-related immigration matters**, including permanent residence, citizenship and relocation of spouses and other dependents
- **Case management**, maintaining employee records for visa renewals, provision of status reports and planning and coordination of global immigration requirements
- **Employment, employee benefits and taxation advice** in relation to transfer of staff and auditing to ensure compliance with employers' obligations to prevent unauthorized employment
- **Ancillary transfer issues**, working with a range of professionals in relation to shipping of personal belongings and customs and excise duties
- **Establishment of new business operations abroad**, including the transfer of senior personnel to establish operations and related corporate and securities and taxation advice

Further Information

Bakerimmigration.com provides links to current articles, practice group members, subscriptions to publications, and other resources for global mobility professionals.

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Structuring International Transfers of Executives is our publication providing an in-depth discussion of compensation issues for expatriates.

Worldwide Guide to Termination, Employment Discrimination & Workplace Harassment Laws and Worldwide Guide to Trade Unions & Works Councils is our guide to help employers manage global business change.

Section 2 Major Issues

Immigration

Executive Summary

Immigration laws, like other laws, differ from country to country. Although the specific names for the visas and the requirements differ, there are common patterns and trends - especially for countries balancing the interest of engaging in global commerce with protecting local labor markets and national security.

Treaties and bi-lateral agreements often give special privileges to citizens from specific countries (*e.g.*, benefits for European Union and European Economic Area citizens with the EU/EEA region; benefits for citizens of Canada, Mexico and the United States under the North American Free Trade Agreement). Be careful not to overlook these sometimes hidden gems when considering alternatives.

This chapter identifies these common patterns and trends. In the Country Guide Section, there is more specific, country-by-country information.

Current Trends

It invariably takes longer than expected to secure all of the authorizations required before a foreigner can go abroad for business. Planning in advance of advance planning is best, if such a thing is possible.

The best laid plans go often awry. Sometimes short-term business travel is the only way to meet an immediate need. But the visas that are quickly available for such trips generally are not intended for productive work or long-term assignments.

In the interest of national security and with concerns of protecting local workers, the trend continues in many countries of more actively enforcing prohibitions against unlawful employment. Penalties against employers are as common as penalties against foreign employees. And these penalties are increasingly including criminal, rather than just civil, punishments (see, *e.g.*, Kazakhstan and the US). The potential damage to an employer's reputation with the government agencies, impact on future visa requests, and potential bad publicity makes it especially important to obey the spirit, as well as the letter, of the law in this area.

With these points in mind, plan ahead and do not rely on what may have seemed like quick solutions in the past. Use of tourist visas for business travel is not a solution. And the problems only increase when family members to accompany the employee on a holiday visa and then try to enroll children locally in schools, get a local driver's license, *etc.* Shipping of household possessions and pets is also ill-advised at this stage. Many countries will require the foreigner ultimately to depart and apply for the proper visa at a consular post outside the country - often in the country where the foreigner last resided.

Business Travel

Visitor Visas

Multinational corporate groups routinely have employees visiting colleagues and customers in different countries. How easily this can be accomplished often depends as much on the passport carried by the employee as it does the country being visited. The length of the trip and the scope of activities undertaken can be key, with visa solutions for short trips (*i.e.*, under 90 days) generally more readily available.

Travel for tourism and travel for short-term business visits is often authorized by the same visa. But that is generally true only when the

scope of the intended business activity does not raise to the level of productive employment in the country being visited.

Sourcing compensation locally during the visit is routinely prohibited, but the focus usually extends beyond the duration of the trip or the source of wages. Visiting customers, attending meetings, negotiating contracts, *etc.*, are commonly permitted. Providing training, handling installation or post-sales service, *etc.*, are commonly prohibited.

Visa Waiver

Most countries have provisions that waive the normal visa requirement for tourists and short-term business visitors. These visa waiver benefits tend to be reciprocal and are limited to citizens of specific countries (*i.e.*, those that extend similar benefits to local citizens). Additional requirements (*e.g.*, departure ticket) are sometimes imposed. Further, the countries that enjoy visa waiver privileges frequently changes, making it important to check for updated information with a country's consular post before making travel arrangements.

Training

Companies with experienced staff in one country invariably want to bring newer staff from abroad for training. This is especially true when the research and development work happens in one country, the manufacturing in another, post-sales installation and support handled by regional centers, and the ultimate users spread around the world.

Many countries offer specific visas designed for training assignments (*e.g.*, Brazil, Japan). Some of these authorize on-the-job training that involves productive work. Others are limited to classroom-type training. Visas designed for employment assignments can often be used in training situations, if on-the-job training is desired and not otherwise permitted by a pure training visa.

Employment Assignments

Visas for employment assignments are invariably authorized, but the specific requirements vary widely.

Work Permits

Most countries are keen to protect their local labor market. A recurring solution is to impose some kind of labor market check as a prerequisite to issuance of a visa for an employment assignment (*e.g.*, Malaysia). These are often handled by a Ministry of Labor or equivalent government labor agency, as distinct from the Foreign Affairs governmental agency that issues visas at consular posts. In many countries, the Labor agency's authority is framed in the context of a work permit.

If a work permit or equivalent document is a requirement generally imposed for employment assignments, it is just as common for countries to have visas that are exempted from the work permit requirement (*e.g.*, Belgium). The number of exemptions greatly exceeds the general rule.

Just who is exempted, again, depends on the country. Most countries exempt employees being transferred within multinational company groups. Most countries exempt business investors and often high-level/key employees.

Education, especially higher level education in sought after fields, often can be used to qualify for employment assignments. Academic transcripts showing studies completed are frequently required. Letters verifying employment experience can be similarly useful.

Residence Permits

Increasingly common is concern over national security. Background clearance checks and the collection of biometric data for identification

purposes is increasingly common today. But a number of countries have long addressed this concern with a reporting requirement. Sometimes this is done in the form of a residence permit, usually handled by a Ministry of Justice, Ministry of Interior, or equivalent agency. In other cases or in combination with the above, there is a requirement to report to local police authorities after arrival in the country (*e.g.*, France, Italy). These requirements are every bit as important to maintaining status to lawfully live and work abroad as obtaining the proper visa.

Other Concerns

An increasing number of countries are requiring medical or physical examinations with the goal of limiting the spread of contagious diseases (*e.g.*, Saudi Arabia, People's Republic of China, Russian Federation).

Most countries offer derivative visa benefits to accompanying family members. What constitutes a family member varies a great deal. The spouse and unmarried, minor children are commonly included. An increasing, but still minority, of countries cover different sex life partners, with same sex partners even less commonly covered (*e.g.*, Canada, The Netherlands). A few countries include more distant relatives (*e.g.*, parents in Colombia) or older offspring, generally if dependents of the principal visa applicant's household.

Documents submitted in support of the immigration process generally need to be translated into the local language. Many countries require that public documents (*e.g.*, articles of incorporation, company registration, birth certificate, marriage certificate) be authenticated by the attachment of an internationally recognized form of authentication or "apostille" (*e.g.*, Spain). This cumbersome process generally involves first obtaining an authentic copy from the government agency that retains the official record. The second step is sending that

document to the government agency responsible for verifying that document is, in fact, authentic.

Further Information

See the Country Guide Section of this publication for more specific information on each country's visa requirements. Please contact your Baker & McKenzie attorney for specific guidance on current legal requirements and how they applies to your own needs.

Employment

Introduction

Integral to mobility planning is identifying and establishing the appropriate employment structure for the employee who is being sent to work in another jurisdiction. For planning purposes, it is important to keep in mind the laws of the jurisdictions involved, the business goals related to the foreign assignment, and the facts of the individual's situation.

Employment Structures for International Transfers

The primary question to ask is, who will be the employer? That is, who will have the right to direct and control the activities of the employee while working abroad?. In general, multinational companies typically use one of the four following employment structures to answer this question:

- Secondment - the employee remains employed by his home country employer and is loaned or seconded to work in the foreign jurisdiction for a period of time;
- Transfer - the employee is terminated by his home country employer and is rehired by a new employer in the host country;
- Global Employment Company – the employee is terminated by his home country employer and transferred to the employ of a global employment company or “GEC”. The GEC in turn seconds the employee to work in a host jurisdiction.
- Dual Employment - the employee actively maintains more than one employment relationship simultaneously during the

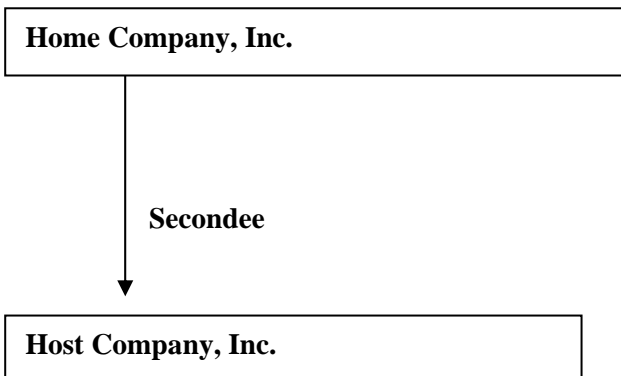
course of the assignment (that is, he works for two or more employers).

In addition to these four, main structures, multinational companies sometimes use other structures, although they are not as popular. For example, in several European countries it is possible to use a “dormant contract” approach, whereby the employee’s existing employment relationship is suspended for the duration of his foreign assignment, he is formally transferred to and becomes an employee of another company during the duration of his assignment, and then his dormant contract is “revived” upon the termination of his assignment and his return to his original employer. Other possible structures include putting the employee on a “leave of absence” for the duration of the assignment, or terminating the employee and then re-hiring him as an independent contractor.

Secondment

In the secondment scenario, the employee remains an employee of the home country employer, (“Home Company”) and is sent to the foreign jurisdiction to provide services for the benefit of the host country employer (“Host Company”).

Typical Secondment Structure



The employee continues under his home country employment contract, except to the extent modified by the terms of his letter of assignment and duties in the host country. In exchange for receiving the services of the seconded employee, the Host Company typically pays a fee to the Home Company, usually equal to the costs of compensating the seconded employee and sending him on assignment. Sometimes there is a markup on the secondment fee, as determined in consultation with tax advisors and based on transfer pricing principles.

In documenting a secondment, great effort should be taken to expressly continue the Home Company employment relationship (and especially the “at-will” status of the employee when the home country is the United States for example) so as to provide a contractual argument against application of host country termination protections and entitlements. As a practical matter, however, it is likely that an employee employed by a company in one jurisdiction who is working at a company in another jurisdiction will enjoy the benefits of employment laws of both jurisdictions during the course of the secondment and upon termination.

Another pitfall of the secondment approach is the potential “permanent establishment” issue created if an employee of one country is sent to work in another country. If that employee has the right to enter into contracts in the name of the Home Company, then the local tax authorities in the host jurisdiction may seek to impose a corporate tax on the activities of that individual on the ground that he is a taxable presence of the Home Company. Often, the “permanent establishment issue” can be avoided or at least minimized if the employee does not have the express right to enter into contracts in the name of the Home Company. Consultation with tax counsel about this issue is prudent under most circumstances.

Another challenge presented by secondment is that it sometimes will be challenging to implement where the employee, as a matter of law, must be employed by a local entity in order to receive the proper

immigration papers and work permit to enter the country. Also, in some countries an individual with a certain title (*e.g.*, CEO) must as a matter of local employment law be employed by a local company.

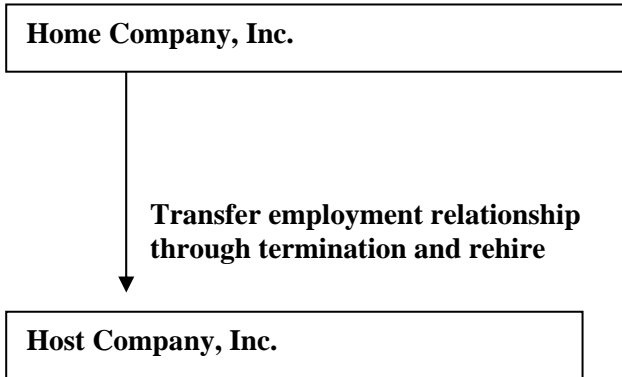
Secondments, , nevertheless, remain the most common method of transferring employees to another jurisdiction. In particular, assignments are desirable where the employee has particular benefits or status that they wish to keep while working in the host country, such as a retirement or pension plan. Many US expatriates, for example, like to remain covered by their U.S-tax qualified plans and other US style benefits while working abroad, so the secondment structure facilitates this extended participation.

Transfer of Employment

In the transfer scenario, the employee's employment with the Home Company is terminated and the employee is rehired by the Host Company. This structure is the preferred approach from a pure employment law perspective because it creates a "clean break" between employing entities, and thus clarity as to what laws govern the employment relationship on a going forward basis.

Since this alternative involves a technical termination of employment, however, all associated termination obligations and benefits are triggered (*e.g.*, the payment of severance, the final paycheck and vacation payout, and so forth). In some jurisdictions, payment of severance is mandatory and cannot be waived under local law. Thus, while a preferred approach from an employment law perspective, the transfer approach is also the most expensive, typically, for the employer to implement. For additional information on termination obligations, please see Baker & McKenzie's publication ***Worldwide Guide to Termination, Employment Discrimination, and Workplace Harassment Laws***.

Typical Transfer of Employment Structure



Documenting a transfer usually involves a two-step process. The first step is a letter agreement between the current employer and the employee to mutually terminate the employment relationship, and to waive any notice and/or severance entitlements (vacation roll-overs also can be addressed) if allowable in the particular jurisdiction and in accordance with local laws. There is also an opportunity to obtain a release of claims (if allowable under local laws) if there are any potential concerns regarding latent claims with the prior employer. The second step is an offer letter or employment agreement from the new employer. Since the employee in this situation has a “history” with the company, it is common practice not to include any probationary periods in the new offer of employment, and to recognize prior seniority.

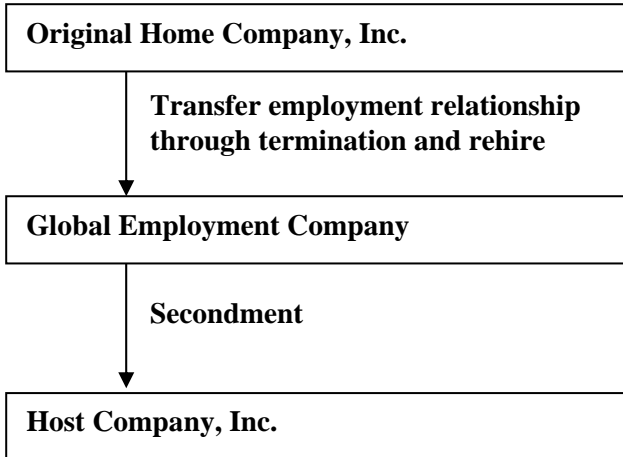
In light of the inherent cost and more elaborate transfer mechanics, multinational companies tend to use this approach vary sparingly. A long-term or permanent assignment to a new jurisdiction may suggest use of this structure, but for most foreign assignments a direct transfer will not be the first choice.

Global Employment Company (“GEC”)

This alternative is something of a hybrid, combining elements from both secondment and transfer structures. First, the employee is terminated by his home country employer and transferred to a special services company (usually an affiliate) organized for the express purpose of employing expatriates. The GEC, as the employee’s employer, becomes the employee’s “Home Company”), and it then second the employee to work for an affiliate as needed.

The use of a GEC can offer employers and expatriate employees with greater flexibility (and uniformity) in structuring compensation, benefits, social security, and related taxation for their global workforce. The GEC provides an effective buffer for any permanent establishment issues that may arise, since the GEC becomes the “employer” and thus it is only the GEC that has the PE exposure. Finally, this structure limits the number of jurisdictions that are taken into account since all employees are housed in the GEC. Multinationals look to employer-friendly jurisdictions as the location for their GEC: such as the U.S., Switzerland, and Singapore. Other choices include tax-friendly jurisdictions, such as the Cayman Islands, Bermuda, Guernsey, and so forth, reducing or minimizing any tax exposure the GEC may have as a corporate entity.

Global Employment Company (“GEC”)



Global Employment Companies are popular with multinationals who have large expatriate populations. Given the amount of work necessary to set up a GEC, however, companies with smaller expatriate populations tend not to use this alternative. Often, a GEC can be established as a “paper” company, that is, it exists for real but it contracts out for all of its services (*e.g.*, accounting, payroll, employee benefits, H.R., and so forth) with related companies.

Dual Employment

In the dual employment scenario, the employee has two or more active employment relationships.

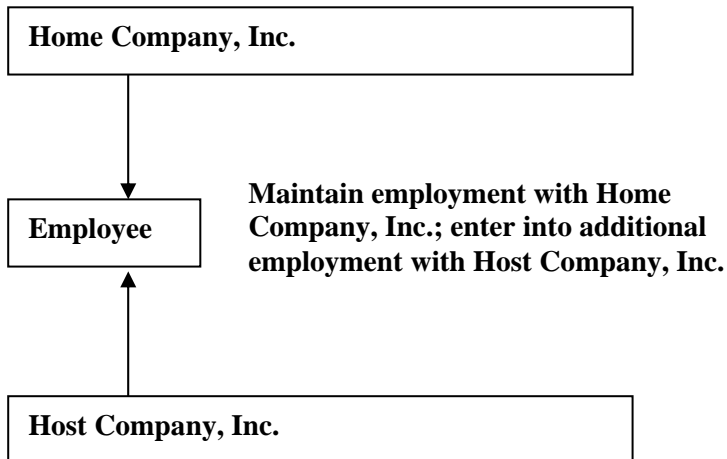
A dual employment structure is often used in a situation where the employee is in fact providing services that benefit more than one entity, such as a sales manager who is selling products covering more than one line of business, or an executive who has multiple titles and reporting relationships. Dual employment can, in some cases, achieve some favorable tax results for executives who work in jurisdictions

that tax compensation on a remittance basis, and in other situations, but careful planning is required to avoid getting the company into trouble for failing to withhold or report income where required.

This structure is more burdensome than the other structures since it requires maintaining two employment relationships, two employment agreements, multiple tax and filing obligations and the related payroll and benefits implications. As a result, it the least common structure.

Documenting a dual employment relationship usually involves one employment agreement between the employee and one company within the group, and a second employment agreement between the employee and another company within the group. These agreements should be carefully drafted to appropriately document the duties, responsibilities, time allotment and commensurate compensation for each separate employment relationship.

Typical Dual Employment Structure



Further Information

The Global Employment Practice works in coordination with the Global Migration and Executive Transfers Practice. Employment practitioners help structure employment relationships for global mobility assignments that factor in the employment laws of multiple countries/jurisdictions. They also assist multinational companies in developing corporate policies and practices for global mobility assignments, as well as guide employers on current trends and best practice solutions. They play a key role in pre- and post-acquisition integration on mergers, acquisitions and reorganizations, as well as redundancies and reductions in force.

Compensation and Employment Benefits

Introduction

While an employee is working on a foreign assignment, one question that always gets raised is what compensation and benefits will apply. Many multinational companies have dedicated employee benefit plans and procedures in place to cover expatriate employees and provide them with meaningful benefits. In some cases, however, the compensation and benefits package has to be specially-designed to fit the individual's situation.

The factors to consider include: the jurisdictions involved, the length of the employee's assignment, the employment structure, the employee's desire to remain covered by home country benefit plans (in some cases), whether the employee will return to his home country after the assignment, among others.

Compensation and Payroll

Once the employer has determined how much to compensate the employee (*e.g.*, base salary, potential bonus, and so forth), the next question will be: Where will the employee be paid?

Note that in most circumstances it does not matter under local law where the employee is paid. As a result, often the employee can continue to be paid from his home country, in which case the amounts are typically deposited in a home country bank account for the employee and he then accesses the funds from a branch in the host country where he is working.

However, not every expatriate works in a jurisdiction with a bank that has branches in both the home and host jurisdictions. Accordingly, sometimes the employee receives all or a portion of his compensation

in the jurisdiction where he works, that is, from a local company in the jurisdiction.

Paying compensation to the expatriate typically is not determinative of the employer-employee relationship. A company does not become the expatriate's "employer" merely because it pays compensation. Often, companies are designated to serve as payroll agents for other companies. Accordingly, the local company might pay compensation to the expatriate as payroll agent on behalf of the expatriate's real employer in the home jurisdiction. Where compensation is delivered locally, it is subject to any applicable income tax and social tax withholdings, unless an exemption applies.

Note, however, that in a few jurisdictions local employment law does require that employees who are employed locally be paid locally. In those situations, the employee would not be permitted to be paid outside the jurisdiction in non-local currency.

Understanding local law is therefore critical to making sure that the expatriate's payroll is structured correctly and is compliant.

Extending Tax-Qualified Plans to Employees Working Abroad

A common concern of many employees is whether they can continue to participate in a U.S. tax-qualified retirement plan while they are working outside of the United States on a foreign assignment.

A U.S. tax-qualified retirement plan may provide certain U.S. tax advantages that a foreign retirement plan cannot, such as a pre-tax contribution feature (as in the case of a plan under Section 401(k) of the Code), no current U.S. income tax on the contributions made to the plan on the employee's behalf, no current U.S. income tax on earnings of the plan prior to distribution and favorable U.S. income tax treatment upon distribution (such as tax-free rollover treatment).

An employee may be reluctant to part with these tax benefits, unless a substantial expatriation bonus or other “gross-up” allowance is offered. Further, if the employee’s assignment will be short, he may not be able to obtain a meaningful retirement benefit from any non-U.S. retirement plan. And even if he can obtain a sizeable benefit, he may be taxable under U.S. income tax law on the contributions made to such a plan or on the vesting or accrual of such benefits.

A Tax-Qualified Retirement Plan Must Cover “Employees”

As a first step, the plan sponsor should review the terms of the plan document and determine whether the employee’s employment abroad is covered under the plan. In other words, does the plan cover employees working outside of the United States in that particular location? If not, the plan may need to be amended.

The most critical aspect for plan participation purposes is the employer-employee relationship. In general, a tax-qualified retirement plan may not cover individuals who are not technically “employees,” that is, common-law employees of the plan sponsor or adopting employer. For these purposes, a person is in general an “employee” if the employer has the right to direct and control the activities of the person. Failure to limit plan participation to employees only may result in disqualification of the plan.

Accordingly, if the employee is seconded to work for a non-U.S. company, then he will continue to participate in the retirement plan because he technically remains a common-law employee of the U.S. employer.

Further, if the employee transfers to a foreign branch of a U.S. employer, the employee can continue to participate in the U.S. employer’s tax-qualified retirement plan because the foreign branch is merely an unincorporated association and thus is treated as an extension of the U.S. employer.

However, where the employee transfers employment to a non-U.S. parent or subsidiary organization, he would in theory no longer be ineligible for participation.

Controlled Group Coverage

Notwithstanding, the employee's participation in a U.S. tax-qualified retirement plan can be preserved where he is transferred to employment with a member of the same controlled group as the plan sponsor or adopting employer of the plan. For these purposes, a "controlled group" is defined as a "controlled group of corporations," or "trades or businesses under common control" under the Code.

A "controlled group of corporations" is a parent-subsidiary group, in which the parent owns at least 80% of the stock of the subsidiary, or a brother-sister group, in which five or fewer individuals own at least 80% of the stock in two or more corporations, and at least 50% of such ownership is identical with respect to each corporation. Similar rules exist for "trades or businesses under common control," (which include unincorporated entities), affiliated service groups and entities that the Secretary of the Treasury through regulations deems should be treated as one employer for employee benefit purposes.

Note that the controlled group rules, for purposes of tax-qualified retirement plans, include non-U.S. entities in the definition of "controlled group," even though non-U.S. entities are technically excluded from the definition of an "affiliated group of corporations" eligible to file a U.S. consolidated group income tax return.

The IRS has ruled that because of the application of the controlled group rules, employment is tested on an entity-wide basis. That is to say, employment with any member of the controlled group will be considered to be employment with the plan sponsor (other than for deduction purposes, discussed below). Accordingly, the plan sponsor may preserve an employee's participation in the plan as long as he

transfers employment to a member of the same controlled group. The plan document should be reviewed to confirm that participation could in fact be extended in this manner.

Potential Loss of U.S. Deduction

Even if the employee's participation can be continued because he is transferring employment to a controlled group member, the plan sponsor is not automatically entitled to a U.S. federal income tax deduction for its contributions on behalf of such employee, since the plan sponsor may only deduct contributions made on behalf of its own employees. In other words, the controlled group rules and the income tax deduction rules are not completely synchronized. Notwithstanding, the IRS has ruled that if the controlled group member in fact adopts the plan for the benefit of the employee, the contribution *is* deductible.

Nondeductible contributions in general give rise to a special 10% excise tax payable by the employer. Notwithstanding, as long as the nondeductible amount contributed on behalf of the employee does not exceed the amount allowable as a deduction under Code Section 404 (*e.g.*, 25% of compensation), then the 10% excise tax does not apply.

Treat Assignment as a Leave of Absence"

If the employee will be abroad on a temporary assignment, he may also be able to remain a participant in the tax-qualified retirement plan if his assignment is characterized as a "leave of absence." The relevant Regulations provide that a tax-qualified retirement plan may cover employees who are temporarily on leave.

Working for a "Foreign Affiliate"

Another way to continue the employee's participation in the tax-qualified retirement plan is if the employee is employed by an entity

in which an “American employer” (which includes a U.S. corporation) has a 10% or more interest (*i.e.*, a “foreign affiliate”). In that case, he will be treated as employed by the American employer for purposes of the American employer’s tax-qualified retirement plan, if certain requirements are met, including that the American employer agrees to extend U.S. Social Security coverage to all of the foreign affiliate’s employees who are U.S. citizens or residents by means of a Section 3121(l) agreement filed with the IRS.

A similar provision applies to certain employees of U.S. subsidiaries having non-U.S. operations.

Adoption by Foreign Employer

Plan coverage could also be continued by arranging for the foreign employer to adopt and make contributions to the plan.

Foreign Law Implications

There are a number of foreign laws that may have an effect on an employee’s participation in a U.S. tax-qualified retirement plan, including the following:

Tax Laws

The employee might be taxed under local rules before receiving distributions from the plan. The local tax rules may provide for taxation, for example, when benefits are accrued, when a contribution is made to the plan or allocated to a plan account on the employee’s behalf, or when the employee vests in the contribution.

Labor Laws

In certain countries, plan benefits or contributions may have to be counted when determining the employee’s dismissal pay or

termination or severance indemnities that may be payable when he leaves employment. Further, the plan benefits may run afoul of compliance with certain nondiscrimination rules. There is also a risk in some “acquired rights” jurisdictions that plan participation and benefits may not be terminated or revised unilaterally by the employer without consent of the employee.

Securities Laws

If employer stock is allocated to the employee’s account under the plan, foreign securities laws may require compliance with certain registration or prospectus distribution requirements, unless exemptions are applicable.

Coverage under Non-U.S. Retirement Plans

Although there are many reasons why an employee may prefer to remain a participant in a U.S. tax-qualified plan, there are number of reasons why the employee may desire to participate in a non-U.S. retirement plan instead. For example, if the employee transfers to employment with an employer who is outside of the controlled group, he may simply be unable to continue participation in the U.S. plan. Or, if the U.S. plan sponsor may not be able to, or may not want to extend coverage to the employee.

Additionally, the non-U.S. plan may provide more generous retirement benefits than the U.S. plan. For example, in a number of European countries, private pension plans provide for the cost-of-living indexation of retirement benefits. This indexation means that retirement benefits are increased for cost-of-living adjustments, which results in a larger benefit to the retiree over time.

Finally, non-U.S. tax laws may provide certain tax advantages for the employee. For example, such laws may tax the employee if he

participates in the U.S. tax-qualified retirement plan, but may not tax him if he participates in a retirement plan in the local jurisdiction.

For these reasons, participation in the local retirement plan may be attractive to the employee. This result is even more likely if the U.S. tax-qualified retirement plan does not penalize the employee for discontinued plan participation through lengthy vesting schedules, final pay benefit formulas, or restrictive definitions of “compensation.”

Some representative, non-U.S. retirement plans are described below:

In the United Kingdom, pension plans fall into two general categories: the State Scheme and private pension schemes. The State Scheme consists of a basic (flat rate) pension and the State Earnings Related Pension or “SERP.” The State Scheme is funded by mandatory contributions called National Insurance Contributions from employers and employees.

Most U.K. private pension schemes are set up by employers to supplement the State Scheme, although an increasing number of individuals are establishing their own private arrangements and pensions. Employers, and in most cases, employees will finance the scheme through an irrevocable trust that will normally comply with certain statutory requirements, in the same manner as a tax-qualified retirement plan in the United States must comply with the requirements of Code Section 401(a). If the scheme is approved by Inland Revenue, the contributions paid by the employer are deductible, the employees are not taxed on their employers’ contributions, and any investment earnings of the fund are not subject to tax.

There are several different kinds of private pension plans in Canada. These plans fall into two basic groups: registered and unregistered plans.

Registered Pension Plans, which provide for tax-deductible employer contributions, are generally either defined contribution plans or defined benefit plans. Registration of a pension plan in Canada is similar to the process of obtaining a favorable determination letter for a tax-qualified retirement plan from the IRS. Other types of registered plans include Deferred Profit Sharing Plans and Group Retirement Savings Plans (where one or more individual Registered Retirement Savings Plans are sponsored as a group plan by the employer).

Unregistered arrangements include a retiring allowance, which is a lump sum at retirement, and a Retirement Compensation Arrangement, under which employer contributions are made to a custodian and are subject to a 50% refundable tax. Pension plans may also be classified as Employee Profit Sharing Plans, Employee Benefit Plans or Salary Deferral Arrangements.

Retirement schemes in Hong Kong are regulated by the Occupational Retirement Schemes Ordinance (“ORSO”). Unless an exemption from registration applies, it is a criminal offense for an employer to operate, make a payment to, or otherwise contribute to or participate in, an unregistered scheme. The rights of members of unregistered schemes are, however, protected.

ORSO requires a scheme to be registered if it has or is capable of having the effect of providing benefits, in the form of pensions, allowances, gratuities or otherwise, payable on termination of service, death or retirement, to or in respect of persons gainfully employed in Hong Kong or elsewhere under a contract of service. An exemption to the compliance requirements under ORSO may be granted if the scheme is registered with or approved by an offshore authority which performs functions similar to those of the Hong Kong Registrar, or fewer than 10% or 50 of the scheme members, whichever is lower, are Hong Kong permanent residents.

The Mandatory Provident Fund Schemes Ordinance (MPFSO) sets out the framework for the MPF system in Hong Kong. In keeping with Hong Kong's policy of encouraging market enterprise, the legislation establishes a mandatory retirement system which is largely run by the private sector. The fundamental requirement of the MPFSO is that every employer of relevant employees must establish or join a MPF scheme. Non-Hong Kong employers will be subject to the legislation if they have employees in Hong Kong. A "relevant employee" is defined as an employee of between 18 and 65 years of age, including apprentices.

The MPFSO contains a number of specific exemptions, including ones for expatriate workers and members of existing schemes.

The employer is required to contribute 5% of the employee's relevant income to an MPF scheme. Employees who are members of an MPF scheme are required to contribute 5% of relevant income up to a ceiling contribution level. An employee who wishes to contribute in excess of the ceiling may do so.

In Japan, there are three basic types of retirement plans:

- the unfunded severance benefit plan
- the tax-qualified pension plan
- the Employees' Pension Fund plan

The unfunded severance benefit plan usually makes a distribution of a lump sum severance benefit when an employee terminates employment.

A tax-qualified pension plan is a voluntary, company-run plan that is managed by an external fund manager. Companies with tax-qualified pension plans are eligible for certain preferential tax treatment, but the

system has several deficiencies and in April 2002 the Japanese government decided to abolish it by March 31, 2012.

In its place, two new corporate pension systems were established; the Defined-Benefit Pension Plan and the Corporate Type Defined Contribution Pension Plan, both of which incorporate greater employee protections. Companies with a tax-qualified pension plan are required to (i) shift to one of the alternative systems; (ii) shift to the Small and Medium Enterprise Retirement Allowance Cooperative System; or (iii) terminate and liquidate their existing pension fund by March 31, 2012. As of that date, tax-qualified pension plans will no longer attract tax benefits.

The Employees' Pension Fund generally is available only to employers with 500 or more employees, and is a means for an employer to contract out of the earnings-related part of the social security pension program.

U.S. Tax Consequences of Participating in Non-U.S. Plans

One of the most important considerations in determining whether an employee should participate in a non-U.S. pension or other employee benefit plan is the potential U.S. federal income tax consequences of such participation.

If an employee participates in a non-U.S. plan funded through a trust, his tax consequences generally are determined under Code Section 402(b), which provides in general that contributions must be included in the employee's gross income when vested. Note that limited relief is provided under several U.S. income tax treaties (*e.g.*, U.K. and Canada).

An employee who participates in a non-U.S. plan should also address any potential issues under Code Section 409A and 457A. A non-U.S.

retirement plan is potentially subject to these rules because it provides a form of nonqualified deferred compensation.

A complete review of the Code Section 409A and 457A rules is beyond the scope of this discussion. In general, if a person has a legally binding right in one taxable year to receive an amount that will be paid in a subsequent taxable year, that amount is considered deferred compensation for the purposes of Code Section 409A, unless it meets one of the exemptions.

Assuming that no exemption applies, amounts that are considered deferred compensation must comply with various requirements regarding the time and form of the payment, timing of deferral elections, and a six month delay of separation payments made to certain “key employees” of a public company.

In addition, there are prohibitions on offshore funding and funding tied to the employer’s financial condition. If the requirements are not met, the deferred compensation amounts will be taxable at the time of vesting and an addition 20% tax will apply.

Although it is unlikely that non-US compensation plans (*e.g.*, retirement plans, equity incentive plans, cash bonus plans) would be designed to comply with Code Section 409A requirements, the IRS does apply the Code Section 409A rules to all plans globally that have US taxpayer participants.

As a first step of the analysis, it is critical to identify all of the potential compensation plans, including equity compensation plans, that will be offered to the employee. The Code Section 409A rules do provide a few specific exemptions for non-U.S. plans, and these provisions should be reviewed in connection with proposed participation by an employee.

For example, a foreign retirement plan may qualify for an exemption from Code Section 409A as a “broad-based retirement plan”. For US citizens and green card holders, the requirements for this exemption include:

- They are not eligible to participate in a US qualified plan;
- The deferral is non-elective and relates to foreign earned income; and
- The accrual does not exceed the amount permitted under Code Section 415 (*i.e.*, the US qualified plan limits).

The broad-based plan must also meet the following requirements:

- The foreign plan must be in writing;
- The foreign plan must be non-discriminatory in terms of coverage and amount of benefit (either alone or in combination with other comparable plans); and
- The foreign plan must provide significant benefits for a substantial majority of the covered employees and contain provisions, or be subject to tax law provisions or other restrictions, which generally discourage employees from using plan benefits for purposes other than retirement and restrict access to plan benefits before separation from service.

There are also Code Section 409A exemptions for plans exempt under a tax treaty, foreign social security plans, and plans that considered funded by means of a trust under the rules, among others.

In addition, Code Section 457A also applies to deferred compensation earned by a US taxpayer employee working abroad. It limits the ability to offer deferred compensation in cases where employees (who

are subject to US taxation) perform services for employers who are considered “nonqualified entities”. In general, employers based in jurisdictions that do not have a corporate income tax will be “nonqualified entities.”

Further, even non-US entities, based in jurisdictions that have an income tax treaty with the United States, and which are subject to a corporate income tax in that jurisdiction may also be considered “nonqualified entities” depending upon the extent of the corporate taxation.

A full discussion of Code Section 457A is beyond the scope of this publication, though employers are encouraged to monitor any subsequent IRS guidance on the treatment of expatriate employees for purposes of Section 457A.

ERISA Implications

Because of the breadth of the definitions in the Employee Retirement Income Security Act of 1974, as amended (hereinafter “ERISA”), a non-U.S. retirement plan may inadvertently become subject to ERISA absent the application of a specific exception. In general, ERISA applies to an employee benefit plan established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce.

Non-U.S. retirement plans typically do not worry about ERISA because of the statutory exemption that ERISA does not apply to a plan maintained outside the United States primarily for the benefit of persons substantially all of whom are nonresident aliens. The Department of Labor, which has primary jurisdiction for the interpretation and enforcement of ERISA, bases its determinations that plans qualify for this exemption on factors such as whether the plans cover all or primarily all nonresident aliens, whether the work location of the employees are outside the United States and whether

the plan records and documents are maintained outside the United States. Whether a plan can meet this ERISA exemption is a facts and circumstances determination.

Equity Compensation

To the extent that the employer intends to grant equity compensation to the employee while he is working abroad, then a number of local tax, securities, exchange control, data privacy and other issues will arise. These issues need to be carefully considered since a violation of these local laws, even with respect to one employee, carry significant monetary fines and other penalties.

The tax consequences in each jurisdiction vary, and do not always match the U.S. tax consequences. For example, some non-U.S. jurisdictions tax a stock option at the time the employee actually exercises the option (*e.g.*, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom). Other jurisdictions tax employees at the time a stock option is granted (*e.g.*, in Belgium if the employee accepts in writing within 60 days of grant). Other jurisdictions tax the grant of stock options on vesting (*e.g.*, in Australia for options acquired after July 1, 2009, that satisfy the conditions for deferred taxation.).

In addition, some jurisdictions have local tax-qualified plans (*e.g.*, France and the United Kingdom). If the equity award is granted to the expatriate under such a plan, then he will enjoy favorable income tax treatment (usually, deferred tax).

The tax consequences are further complicated if the employee is granted an equity award in one jurisdiction, but vests in that award or exercises that award in another jurisdiction. Tracking what tax liability is owed to which jurisdiction is challenging, especially with respect to employees who work in multiple jurisdictions during their expatriate assignment.

And the issues relate not only to understanding the employee's tax liabilities, but also understanding the reporting and withholding obligations that result from such taxation will be the responsibility of the equity plan sponsor and employer. Each jurisdiction has different rules regarding the sourcing of such compensation and there is little relief found in Income Tax Treaties. Accordingly, it is difficult to handle the tax issues associated with equity compensation awarded to globally mobile employees in a uniform manner.

Although U.S. issuers are generally not entitled to an income tax deduction for equity awards related to employees working for a local subsidiary, the local subsidiary may be able to obtain a local income tax deduction related to such amount. In many jurisdictions, the income tax deduction of the local subsidiary is premised upon the execution of a written reimbursement agreement between the U.S. parent company granting the equity award and the local subsidiary prior to the grant. Some jurisdictions do not permit such a deduction (*e.g.*, Canada).

The grant of equity compensation to an employee may trigger local securities law compliance issues, such as the requirement to make a filing with the local securities authorities, or to distribute a prospectus document to employees. For example, an offer document and filing in Australia is often required. In Japan, grants to 50 or more employees of an indirect or less than wholly-owned subsidiary with an offering value equal to or greater than ¥100,000,000 will require an extensive filing and annual reporting obligation. Grants of equity compensation in Europe may require a filing under the EU Prospectus Directive.

In certain jurisdictions, exchange control rules still play a large role in determining the ability of a corporation to offer equity compensation to an employee. In some jurisdictions (*e.g.*, in China), prior governmental approval is required before an equity plan can be implemented. In other jurisdictions, it is not possible to send local currency outside of the jurisdiction to purchase shares of stock

without obtaining a tax clearance certificate and submitting a funds application form to an authorized exchange control dealer (*e.g.*, in South Africa).

Further, the grant of an equity award to the employee may require compliance with local data privacy and labor rules. Certain jurisdictions have formal legislation prohibiting the transmission of certain personal information about their employees, such as name, age, seniority, and so forth, across borders, even to an affiliated company. Some jurisdictions require the employee to consent to the transfer of such information, some jurisdictions require the formal approval or notification to a local governmental authority, and some require both.

Further, the value of the equity compensation offered to the employee may give rise to acquired rights issues in certain jurisdictions, making it difficult to terminate the benefit in the future without the employee's consent. Also, the value of the equity compensation may need to be included for purposes of calculating a terminated employee's severance pay, creating a more expensive termination situation for the employer.

Continuing U.S. Health Benefits

If U.S. group health plan coverage is provided to an employee and his family while they are living in a non-U.S. jurisdiction, the plan should be reviewed for any coverage gaps and other problems that may be caused by the foreign assignment. For example, U.S. group health plans often do not cover employees and their dependents while they are working outside of the United States. If a plan does provide such coverage, it may require that the employee pay his health care expenses upfront and then submit a claim for reimbursement.

Further, a U.S. group health plan may not necessarily provide for the reimbursement of bills by certain foreign doctors or hospitals if the

foreign doctor or hospital does not meet certain qualifications. Amendment of the U.S. group health plan to resolve or alleviate these problems may not be possible depending, for example, on whether the plan is self-funded or third party insurers are involved.

As a result, the employer should review the plan document and consult with its insurer, plan administrator or legal counsel before the employee leaves on his assignment to determine whether coverage can be extended.

Many multinationals sponsor stand-alone global health plans for their expatriates specifically to avoid any coverage issues under the U.S. domestic health plan.

The U.S. income tax consequences of providing health benefits to the employee and his family through the U.S. group health plan should also be considered. As a general rule, if the employee is not employed by a U.S. employer, or a foreign branch or a member of the U.S. employer's controlled group, the U.S. employer's contributions to the plan and the amounts the employee and his dependents receive through the plan may no longer qualify for tax exemptions under the Code.

Also, if the U.S. group health plan is financed through the mechanism of a cafeteria plan and the employee is no longer employed by a U.S. employer, or a foreign branch or a member of the controlled group of the U.S. employer, the employee and his dependents may lose the ability to make pre-tax contributions under the cafeteria plan.

If the employee becomes a resident in the foreign jurisdiction and is subject to local laws during his foreign assignment, the potential impact of the foreign laws should also be considered. For example, the premiums paid on behalf of the employee or benefits provided through the U.S. group health plan may be taxable to the employee or his dependents under the tax laws of the foreign jurisdiction. The

premiums or benefits may be also subject to employment tax withholding and the premiums or benefits may be includible in the calculation of severance indemnity payments an employer must make or dismissing an employee.

If the employee is a participant in an insured plan in the United States, there may also be a problem if the U.S. insurance company is not registered to conduct business in that country. Failure to comply with this registration requirement may mean the insurance agreements are unenforceable in that jurisdiction and may also trigger monetary sanctions.

Depending on the situation, the employer may want to arrange to replace or supplement the coverage provided by the U.S. group health plan. This arrangement may include:

- the purchase of a specially-designed individual policy;
- the enrollment of the employee and his family in a specially-designed group health plan;
- the enrollment of the employee and his family in an overseas emergency medical services and evacuation program; or
- the enrollment of the employee and his family in a non-U.S. nationalized or socialized health program.

Specially-designed individual or group insurance policies or plans may be useful in addressing coverage gaps and other practical problems that arise because of the foreign assignment. Overseas emergency medical services and evacuation contracts may also be useful when evacuation to the United States is necessary in order to receive a certain type or quality of health care and for referral to qualified foreign health care.

Note that if the employee is no longer covered by the U.S. group health plan he (or any “qualified beneficiary”) will no longer be eligible to elect COBRA continuation coverage since the employee would no longer be a covered employee. Query whether the employee’s transfer of employment to a non-U.S. employer could constitute a “qualifying event” for purposes of COBRA group health plan continuation coverage.

Non-U.S. Health Benefits

Participation by the employee in a non-U.S. health benefit plan may raise a number of issues. Accordingly, many employees try to retain some health benefit coverage in the United States while they are overseas. Many non-U.S. countries have extensive governmental health programs. While non-local, private health plans exist in some countries, they may be structured to provide only supplemental benefits to the benefits provided by the governmental program. Whether an employee can participate in the underlying governmental program may depend on how long he has resided in the non-U.S. country or the satisfaction of other conditions.

Because of limited non-U.S. governmental program benefits, the employee may desire to have supplemental health benefits (if local law does not prohibit them). For example, some governmental programs may only provide ward level care (*e.g.*, no semi-private or private hospital rooms), require the use of certain governmental or governmentally approved facilities or providers, have long waiting periods for certain types of non-emergency care, provide lesser quality care outside of major cities, not provide coverage of certain benefits (*e.g.*, dental coverage), not be used by employees due to a local class bias and may not cover all or part of the costs of health care received while the covered individual is temporarily out of the foreign country (*e.g.*, in the United States on home leave or in another foreign country on a temporary work assignment).

Global Equity Compensation

Executive Summary

Equity compensation awards held by employees present new issues when those employees become globally mobile.

As multinational employers increasingly seek to motivate and retain qualified executives and employees by offering equity-based compensation and, at the same time, transfer such individuals across international borders on short- or long-term assignments, it is important to identify and address the tax, social security and legal impact of such international transfers on equity compensation arrangements. Due to the complexity and global reach of US federal tax and social security regulations, the transfer of employees into and out of the US poses particular challenges that need to be considered in advance of any such transfer of employment.

Key Government Agencies

The Internal Revenue Service (“IRS”) and Social Security Administration (“SSA”) are the government agencies responsible for overseeing the assessment and payment of federal income taxes and social security taxes (*i.e.*, Federal Insurance Contribution Act or “FICA” taxes which include social security and Medicare tax).

In addition, the taxation of mobile employees is significantly impacted by tax treaties and other international agreements and acts, published by the US Department of State, and also by social security totalization agreements negotiated and signed by the Department of Health and Human Services under the US Social Security Act. For “American employers,” which includes corporations organized under the laws of the United States or any State, sending employees to work in a totalization agreement country for five years or less, the SSA has oversight over the issuance of Certificates of US Social Security

Coverage that in certain circumstances enable such employees to remain subject to the US social security system and exempt from social security taxes in the country to which they have been transferred.

State and local income tax and payroll tax authorities also have a stake in the taxation of equity awards held by mobile employees, depending on the time an equity award holder spends in a particular state and municipality.

Finally, the Securities and Exchange Commission (“SEC”) and the State securities regulators have oversight over any offerings of equity awards to employees in the US and the resale of shares acquired by those employees. In some instances, there are exemptions available to the issuer because the offering is to employees; however, securities laws should be considered each time an equity award is granted or exercised or shares are resold.

Current Trends

In recent years, there has been an increasing awareness among US and other global tax authorities that significant amounts of taxes may be owed on income derived from stock options and other forms of equity compensation awards held by employees who transfer employment across international borders. In part, the focus arises from a commentary first published by the Organization for Economic Cooperation and Development in 2002, which addressed the tax difficulties of stock options in a cross-border context.

More recently, in December 2008, the IRS announced that it has added foreign withholding tax compliance to its list of issues with the highest “Tier I” organizational priority and coordination and since then, there has been significant audit activity in this area. Although the IRS’s immediate focus is on withholding of taxes on income paid to non-US resident individuals under Section 1441 of the Internal

Revenue Code, its increased scrutiny of cross-border withholding practices sends the clear message that companies granting equity awards to US-inbound and outbound globally mobile employees cannot afford to ignore proper US tax compliance in this area.

Historically, while both employers and tax authorities have generally had arrangements in place to determine and assess, respectively, the US and foreign taxes owed on salary paid to internationally mobile employees, the proper taxation of income from equity compensation awards has commonly been overlooked. Consideration has not always been given to the fact that equity award income has usually been earned over a period of one or more years, whether over the vesting or the exercise period, during which the relevant employee may have been employed and resident in a number of different countries.

At present, however, it is clear that both US and foreign tax authorities have become aware of potential trailing tax liabilities resulting from the incorrect characterization of income from equity compensation arrangements, and are increasingly focusing their attention on this area. This means that it is important for multinational companies that have granted equity compensation awards to globally mobile employees to identify the particular tax and social security issues affecting the taxability of income from such awards and to develop strategies for dealing with these issues and tracking international tax liabilities upfront.

Business Travel

Depending on the circumstances, foreign national employees coming to the United States on short-term business trips (*e.g.*, total stay of up to six months) may be subject to US federal income taxation on their foreign wages paid during periods spent on business within the US. This is based on the general US sourcing rule in Section 861 of the Internal Revenue Code that compensation for labor or personal services performed in the US is US source income and therefore

subject to US income tax in the absence of an exemption. Where an individual such as a business traveler performs services partly in and partly outside the US, the applicable US Treasury Regulations provide that the portion of the individual's compensation for such services that constitutes US source income should, in many cases, be apportioned on a time basis. In terms of equity awards, Treasury Regulations Section 1.861 4(b)(2)(ii)(F) characterizes income from stock options as "multi-year compensation", *i.e.*, compensation that is included in the income of an individual in one taxable year but that is attributable to a period that includes two or more taxable years.

Where stock options are held by an employee who spends time employed both inside and outside the US, the regulations indicate that it will generally be appropriate to measure US source income by reference to the number of days the employee worked in the US between the option grant date and the date on which all employment-related conditions for the exercise of the option have been satisfied, *i.e.*, the vesting date, relative to the total days worked during the vesting period (although this rule is modified in a small number of cases by a tax treaty between the US and the country in which the employee is resident). This concept applies equally to other forms of equity award such as restricted stock units which vest over a vesting period and employee stock purchase plan rights which vest/ become exercisable over a purchase period.

As a result, if US federal income tax applies to income paid to a given foreign business traveler, it will also apply to any income the employee receives from an equity award that is attributable to the US under the above sourcing rule, due to the fact that a portion of the equity award vested while the employee was on business travel in the US. In such cases, the employer of the foreign national employee will have an obligation to withhold the US federal income tax due.

In practice, a foreign national employee on a business trip will be exempt from US federal income taxation on compensation for labor or

personal services performed in the US if the individual qualifies as a “short-term business visitor” under Sections 861(a)(3) or 864(b)(1) of the US Internal Revenue Code, or if he or she is a resident of a country with which the US has an income tax treaty. Certain conditions must be satisfied for either exemption to apply, which generally require an assessment of the individual’s length of stay in the United States, the amount of compensation paid to the individual while in the United States and the nationality and/or business location of the employer. If an exemption applies, the employee should provide appropriate documentation to his or her non-US employer, including IRS Form 8233 if a tax treaty exemption is relied on for US income tax withholding purposes.

The situation with respect to FICA tax for short-term business visitors to the US is less clear cut, since the US Internal Revenue Code does not contain a specific exemption from FICA taxes for individuals temporarily performing services within the country. In the absence of an applicable social security totalization agreement, technically, FICA taxes will apply to a foreign employee on a business trip in the US, even if for only one day, and notwithstanding that the employer may have no office or other place of business in the country.

If the individual is from one of the 24 countries with which (as of the date of publication) the US has a social security totalization agreement, there should be an exemption from FICA tax under the temporary assignment provisions of such totalization agreement, provided that the foreign employee’s wages (including equity award income) earned while temporarily working in the US are subject to social security taxes in his or her home country. If a totalization agreement does not apply, but there is an income tax treaty between the US and the country of which the foreign national is a resident, it may be possible to take the position that the treaty implicitly provides for an exemption from FICA taxes, depending on the treaty.

US State taxes also need to be considered in any US-inbound transfer scenario. Although it is highly unlikely that foreign nationals on short-term business trips would be considered residents of the applicable State for income tax purposes, some States may tax the individual's compensation, including equity award compensation, if the foreign national performed services in the State. Additionally, not all States recognize US federal income tax treaty exemptions.

Thus, before a foreigner is sent on a short-term business trip to the US, it is important to confirm the extent to which the foreigner may be subject to US federal income tax, State tax and/or FICA tax and, assuming that an exemption is available, take any steps necessary to rely on such exemption. Assuming US income and/or social security tax applies to income earned or deemed to have been earned by the foreign national during the business trip, to the extent that the individual holds stock options or other equity awards that have partially vested while the individual was within the country, a tracking system needs to be established to ensure that appropriate taxes are paid when the individual ultimately realizes the income from the equity award (*e.g.*, when exercising the stock option, or exercising/vesting in such other form of equity award) after departing the US.

Similar considerations will apply when a US national is sent on a business trip to another country, depending on the local tax laws of that country and whether or not such country has entered into a tax treaty or social security totalization agreement with the US. An added complexity is that each country may have its own method of sourcing the income an employee acquires from equity awards for national income tax purposes. Many countries (including the US, as discussed above) broadly follow the model propounded by the Organization for Economic Cooperation and Development, which advocates sourcing the income employees earn upon exercise of a stock option (or similar award) between countries based on the work-days spent in each country during the vesting period; however, some adopt their own

variation of the rule (*e.g.*, grant to exercise apportionment) and yet others apply unique rules that may lead to taxation of the entire award in the country in which the employee worked at the grant date, or on the exercise date depending on the circumstances. In addition, some countries tax equity awards at entirely different times than the US (for example, options may be taxed at grant in Belgium or at vesting in Australia), further complicating the allocation of the income.

Training

The tax treatment of equity awards granted to foreign individuals coming to the US for training assignments will depend on a number of factors, including the immigration status of the individual and whether the entity that granted the equity awards qualifies as a foreign employer under the US Internal Revenue Code.

Further, as discussed above, the US source portion of income employees receive from equity awards is generally based on the work-days the employee spent in the US during the award's vesting period relative to the total number of work-days in the vesting period. Thus, a key factor affecting the taxation of equity awards held by an individual on a training assignment is whether, pursuant to the terms of the stock plan under which the award was granted, services performed by an award-holder while on a training assignment can constitute continued employment for purposes of the award. In other words, whether the individual can continue to vest in the equity award while on the assignment.

If, under the plan terms, a period spent in training is not considered continued employment for vesting purposes and the vesting of the award is therefore suspended for the duration of the assignment, it is likely that US federal income taxes will not apply to any portion of the income the employee ultimately receives from the equity award, since no part of the award will have vested while the employee was in training within the United States. Note that while some stock plans

permit employees to continue vesting during periods of company-approved leave of absence, such periods are usually limited to a maximum of 90 days, and thus would not be suitable for a longer-term training assignment.

Assuming, as is generally the case, that continued active employment with the issuer company or one of its subsidiaries or affiliates is required in order for an award-holder to continue vesting in an equity award, an appropriate US training visa for an individual holding an equity award is likely the J-1 exchange visitor visa. The J-1 visa enables non-US persons to come to the US for paid on-the-job training assignments for periods of up to 18 months, which would usually mean that the vesting of the individual's equity awards would not have to be suspended during the period of on-the-job training.

With regard to the US tax treatment of such individual, any salary income paid to the J-1 visa holder by the sponsoring company for services performed in the United States will likely be subject to US federal income tax under non-resident source taxation rules (provided such salary is not paid by a foreign employer under Section 872(b)(3) of the US Internal Revenue Code). However, different rules need to be analyzed to determine the US tax treatment of equity award income paid to J-1 visa holders.

For instance, if the entity that granted the equity award to the J-1 visa holder is a foreign corporation, the income the individual receives from the equity award should be exempt from US federal income tax under Section 872(b)(3) of the US Internal Revenue Code, notwithstanding that the foreigner spent a portion of the period over which the award vested employed within the US. On the other hand, US federal income tax likely would apply if, for example, the equity award was granted by a US corporation to an employee of one of its foreign subsidiaries, which subsequently sent the employee for a training assignment in J-1 visa status. This is because the income from the equity award that has been granted by the US parent

corporation cannot be considered to have been paid by a “foreign employer,” as required under the relevant US Internal Revenue Code tax exemption.

Tax treaties between the US and the country in which the foreign individual is a resident may also impact the tax result. Given the complexity of the tax treatment, particularly in the equity award context, it is important to assess tax liabilities in advance of any training assignment and develop structures to ensure such obligations can be met.

With regard to US FICA taxes, the situation is generally more straightforward since non-resident alien trainees temporarily present in the US in J-1 visa status are exempt from Social Security and Medicare taxes on wages paid to them for services performed within the US, as long as such services are permitted by the US Citizenship and Immigration Services and are performed to carry out the purposes for which the trainees were admitted to the United States. Therefore, if a foreign individual has been granted an equity award due to the employment relationship, is subsequently sent to the US by the employer on a J-1 training program and the employment during the program qualifies as service under the relevant stock plan, such that the individual may continue to vest in the award while on the training program, it is likely that any income the individual may receive from the award will be exempt from FICA taxes.

As with individuals in the US on short-term business trips, State taxes should also be considered.

Employment Assignments

The international employment assignment context is the key area in which multinational employers need to have controls and procedures in place to track and pay required US and non-US income and social security taxes on equity award income.

US-Inbound Assignments

Foreign employees coming on long-term employment assignments to the US (*e.g.*, more than six months) will likely become US tax residents and be subject to federal income taxes and potentially also to FICA taxes and State and local taxes on all of their income, including equity award income, from both US and non-US sources. However, the particular challenge with respect to equity award income (in contrast to regular salary) is that it is generally attributable to all countries in which the award-holder has been employed over the period between the grant and vesting of the relevant award and may be taxable in such other jurisdictions under non-US sourcing rules. Note that different equity award sourcing rules apply under certain US tax treaties (*e.g.*, with Canada, Japan and the UK which apply a grant to exercise sourcing model), and under local laws of countries outside the US.

The result is that employees transferring into the US holding equity awards will likely be subject to federal income tax withholding on all income they receive from the awards while they are resident in the US and also subject to non-US taxes and possibly to withholding on at least a portion of the same income, subject to any relief an individual may subsequently be able to obtain under the terms of an applicable tax treaty.

In addition, in the absence of a social security totalization agreement between the US and the foreign national's home country (or if there is a totalization agreement and the transfer to the US is for more than five years), with limited exceptions, FICA taxes will apply to the equity award income. Where a foreign national is from a totalization agreement country (with the exception of Italy) and is transferred to the US for a period of five years or less, FICA taxes generally will not apply, provided that the foreigner has obtained a Certificate of Coverage from the home country social security authorities (confirming the foreigner remains subject to the home country social security system) and furnished it to the US employer.

Further, although rules will vary depending on the particular US State in which the transferred employee is employed, where an individual is transferred to work in the US on a long-term or indefinite basis, it is likely that State taxes will apply to the individual's income, including equity award income. Some States including California and New York have specific rules governing the taxation of equity award income partially earned within the State (and are focusing on this income from an audit standpoint), while many others have no specific rules and thus, resort to general principles is required to assess the tax liabilities.

On the regulatory side, if additional stock options or other equity awards will be offered to the US-inbound employee while he or she is in the US, the issuer must ensure that the offer of the securities complies with US securities laws. At the federal level, the shares offered under the equity plan will need to be registered with the US SEC or determined exempt from registration. The shares will also need to be registered or qualified as exempt from registration at the State level based on the State in which the employee is resident. In addition, it is necessary to ensure that the re-sale of shares by the employee is permissible within the US under applicable federal and State securities law registrations or exemptions.

US-Outbound Assignments

Since US federal income tax applies to all income earned by US citizens and permanent residents (*i.e.*, green card holders) anywhere in the world, equal if not greater challenges are presented when a US employer transfers a US citizen or permanent resident employee to work outside the US. Irrespective of the fact that such outbound employees may very likely become tax resident of and fully subject to income tax in the country to which they are transferred, in the absence of an exception under the US Internal Revenue Code, federal income tax withholding and reporting obligations will apply to all of the income earned by the transferred employees.

An exclusion from US federal tax applies under Section 911 of the US Internal Revenue Code for a certain amount of foreign income earned by a US citizen or resident (*e.g.*, up to \$91,500 for 2010), although this is not helpful in the equity award context if, as may often be the case, the individual's salary income alone surpasses this threshold.

An exception that may be useful for equity award income applies under Section 3401(a)(8)(A)(ii) of the US Internal Revenue Code if a US-outbound US citizen's income (including equity award income) is subject to mandatory foreign tax withholding in the country in which he or she is employed, which, for equity award income, varies by country and by whether the local employer entity bears the cost of the equity award. This exception also applies only to US citizens and not to green card-holders, which increases the administrative complexity of applying the exception on a broad basis.

Another exception to US federal tax withholding may apply under the foreign tax credit provisions of Section 901(b) of the US Internal Revenue Code, to the extent the transferred employee has indicated eligibility for a foreign tax credit on Form W-4, although the application of this exception needs to be carefully reviewed on a case by case basis.

Regardless of whether a US tax withholding exemption applies to all or a portion of a US-outbound employee's equity award income, if the employee is a US citizen or resident it is necessary to report the entire income on the employee's Form W-2 for the applicable year.

If an individual employee is subject to double tax on equity award income as a result of withholding by his or her employer or former employer in two or more countries, relief may be available under the terms of an applicable tax treaty, although that can be little comfort to the employee when almost all of the proceeds from, for example, a stock option exercise is initially withheld to meet multi-country tax obligations.

Depending on the outbound US citizen or permanent resident's employer entity and the existence of a totalization agreement between the United States and the country to which the individual is transferred, US FICA tax may also apply to the individual's equity award and other income.

In the absence of a totalization agreement, where a US citizen or permanent resident is employed outside the US by an "American employer" (*e.g.*, a branch of a US corporation), US FICA taxes apply and must be withheld from the individual's income, including equity award income.

If a totalization agreement applies and an individual's equity award income would otherwise be subject to non-US social security taxes, US FICA taxes will generally no longer apply if the transfer is for more than five years, although there are some variations depending on the terms of the applicable totalization agreement. In this US-outbound context, it is important to consider equity award income separately from salary as a totalization agreement will not apply in the absence of double social security taxation and equity award income paid by a US parent company to employees working at a subsidiary or affiliate outside the US is sometimes not subject to local country social security taxes, while salary is rarely (if ever) so exempt. It should also be noted that, unlike the federal income tax regulations, the FICA regulations provide no basis for apportionment of multi-year compensation such as equity award income, which can increase the complexity of meeting US withholding obligations in cases where it is possible to apportion income for income tax purposes.

Solutions to Double Tax Issues

To ease the potential tax burden of internationally mobile employees or a select portion of such employees (*e.g.*, executive-level employees), most multi-national employers have a tax equalization or tax protection policy. These policies ensure that, from a tax

standpoint, an international employment assignment is at least tax neutral and, in the case of protection programs, potentially tax favorable for the assignee.

Under a typical equalization policy, tax-equalized employees on foreign assignment will pay approximately the same amount of income and social security taxes as they would have paid had they remained in the US or their home country, with the employer paying any taxes that exceed this amount, and the employees reimbursing the employer if the amount of tax they actually pay is less than their home country tax liability would have been. A tax protection policy operates in substantially the same way, with the key difference being that the employee does not have to reimburse the employer if his or her actual tax liability is less than the home country liability.

Developing an Approach to Compliance

As is demonstrated by the complexity of the foregoing rules, in advance of sending employees holding equity awards on employment assignments to or from the US, employers need to collect information and develop systems that will enable them to track and calculate the amount of the equity award income subject to taxation and potentially to employer withholding and reporting obligations in each applicable jurisdiction, and the extent to which exemptions from US federal tax income and FICA tax withholding may apply in different employment transfer scenarios.

An essential component of any compliance model is a reliable data collection system to gather and monitor key details that will be determinative of the US and foreign tax and social security treatment of a given transferee. At a minimum, such details include:

- The individual's citizenship;
- US or foreign permanent residency status;

- US or foreign visa status; and
- Time spent in each country during the periods over which the individual's equity awards have vested and whether the individual's employment transfer is intended to be on a short or long-term basis (including if it will for more or less than five years).

In addition, for US FICA tax and, in some cases, State social tax purposes for US-outbound employees, it is necessary to track whether the entity or entities employing the individual outside the US are US or foreign corporations and, if a US corporation, the State of the entity's incorporation.

Where a tax equalization or tax protection policy exists and income from equity awards is covered under the policy (some policies cover regular wages or other specified items of compensation only), it is necessary to be able to separately track the amount of equity award income paid to tax-equalized/tax-protected employees and calculate and pay both the US and foreign taxes actually due based on the individual's residency and/or citizenship status, and the amount of home country taxes that would have been payable had the individual not gone on assignment.

For companies with a large internationally mobile population, it is important to track patterns of international transfer, develop models that will generally apply to common inter-company transfers (*e.g.*, US to UK or India to US) and create assumptions about employment assignments and categories of employees that will facilitate the development of a system that is both compliant and workable.

Finally, regulatory considerations should not be overlooked. To the extent that equity awards are offered to employees while on international assignment within or outside the US, issuers of such awards must ensure that they comply with any securities law

prospectus, registration or exemption filings and any applicable foreign exchange control, labor law, data privacy or other filings that may be necessary to offer equity awards under the local law of the country in which the assigned employee is resident.

Other Comments

As is clear, compliance with income and social security tax requirements is the key concern when equity award-holder employees transfer to and from the US.

Legal issues affecting equity awards also need to be considered in certain transfer situations, particularly where US-based employees are transferred on a long-term basis from the US to countries where securities law, foreign exchange regulations, tax-qualified plan requirements or other legal restrictions impact the equity award agreements and mean that it is necessary or desirable to modify the terms of such awards to comply with local law or gain the benefit of a favorable local tax regime. To the extent possible in light of accounting issues and plan limitations, it is important to structure equity award grants to allow for flexibility to address legal issues that may arise in the global employment transfer context when an employee is relocated after the grant date. For companies making new grants of equity awards on a global basis, a useful best practice in this regard is to adopt a single global form of award agreement that includes a country-specific terms appendix and a relocation provision. Then, if an award-holder goes on international assignment after the grant date, the agreement's relocation provision gives the issuer authority to apply the terms set forth in the appendix to the agreement for the country of transfer, to the extent necessary to comply with applicable laws or administer the grant.

Further Information

The Global Equity Services Practice, supported by tax treaty colleagues, works in coordination with the Global Migration and Executive Transfers Practice, on global mobility assignments. GES practitioners provide streamlined advice on both the US and non-US tax, social security and legal aspects of short- and long-term international employment transfers in the equity awards context. They also assist multinational companies in developing an approach to global equity compensation tax liabilities that combines the degree of legal protection and operating flexibility most appropriate to the interests of the relevant company.

Income Tax and Social Insurance

Introduction

An employee who works abroad is always concerned about the possibility of double income taxation and being subject to social insurance in more than one country. This issue arises not only because of expatriate status, but also because of a number of other factors, such as:

- The income tax, social insurance, and other relevant laws of more than one jurisdiction are involved;
- Many jurisdictions have special rules that apply to the cross-border transfer of employees;
- Many income tax issues revolve around the employee's citizenship, nationality, or residency; and
- The provisions of an income tax treaty or other international agreement may apply to reduce the employee's liability for income tax and social insurance.

As a representative example of how many jurisdictions approach these issues and provide limited relief to expatriates and other mobile employees, this discussion focuses on some of the key US federal income tax and Social Security provisions that apply to expatriates, whether outbound or inbound. Consult with tax counsel to understand the potential application of these or similar provisions to the facts or any particular assignment.

US Federal Income Tax: Short Term Assignments

Where an employee lives and works abroad, it is natural to assume that the country where he is assigned will seek to tax the

compensation. Notwithstanding, many jurisdictions have provided income tax relief for short-term assignments. Understanding how these rules work in any particular country is key to effective tax planning.

If there is no relief under the host country's domestic tax law for employees who are short-term business visitors in that jurisdiction, often there may be relief under an applicable income tax treaty entered into between the host jurisdiction and the jurisdiction from where the employee is coming.

As of the date of publication, the United States has income tax treaties in force with 65 countries. Several income tax treaty provisions may be relevant to mobile employees. The provision addressing "dependent personal services" or "income from employment" is primarily directed at certain short-term assignments.

For example, Article 14 of the US – UK Income Tax Treaty provides a general rule and two exceptions regarding income from employment. In general, salaries, wages and other similar remuneration derived by a resident of the home country in respect of employment is taxable only in that country unless the employment takes place in the host country. If the employment takes place in the host country, the host country may tax it.

An exception may provide for remuneration derived by a resident of the home country for employment in the host country to be taxable only in the home country if:

- The individual is present in the host country for a period or periods not exceeding 183 days in any twelve-month period commencing or ending in the taxable year;
- The remuneration is paid by or on behalf of, an employer who is not a resident of the host country; and

- The remuneration is not borne by a permanent establishment that the employer has in the host country.

Therefore, in the case of an employee who is treated as a US resident under this Treaty, such employee may avoid UK income tax on remuneration in respect of employment in the UK if: he is not present in the UK for more than 183 days during any twelve month period; he is paid by or on behalf of an employer outside of the UK; and the remuneration is not deducted by a permanent establishment which the employer has in the UK.

Many of the US tax treaties have similar, but not always identical language. Some treaties look at whether the has spent more than 183 days in a calendar year in the host country (in addition to the other requirements). In other cases, the time limit may be less than 183 days, or there may be a maximum compensation limit imposed.

It should be noted that the OECD has recently indicated that the “employer” for purposes of treaty analysis is not necessarily the legal employer. The OECD recommends that an “economic employer” concept be used in applying this type of income tax treaty provision.

Consequently, when structuring short-term assignments in countries that are adopting the “economic employer” concept, the activities and the interactions of the employee with any host country entity need to be reviewed. The treaty exemption will only be available if the home country entity meets the test of the “economic employer” and if the other tests are met (*i.e.*, 183 days and no chargeback of compensation costs to the host entity).

In similar fashion, care needs to be taken to ensure that compensation costs related to the employee are not inadvertently charged against and reimbursed by a host country entity or permanent establishment in the host country if there is intended reliance on this treaty exemption. Finally, the existence of a treaty exemption may still require the

mobile employee to complete an individual income tax filing in the host country in some cases.

Treaty provisions providing relief from the potential double taxation of retirement plan participation or distributions and stock option-related income may also be available and should be reviewed in cases of longer term assignments. These provisions are currently present in only a small number of US income tax treaties.

Traveling and Temporary Living Expenses

Under US income tax rules, an employee may be able to exclude amounts paid by the employer for traveling and temporary living expense while “away from home” in the pursuit of a trade or business, including amounts expended for meals and lodging that are not lavish. Code Section 162(a)(2) allows an exemption for expenses that are ordinary and necessary while the employee is temporarily away from home.

Whether an employee is “away from home” is a facts and circumstance based determination. However, in no event can the international assignment be considered “temporary,” if it is expected to last more than one year.

US Federal Income Tax: Long-Term Assignments

In addition to the income tax relief the United States provides to its taxpayers who are on short-term assignments, it also provides some relief for US taxpayers who are on long-term assignments (meaning one year or more).

Foreign Earned Income and Housing Exclusion

One of the most valuable tax planning devices for a US taxpayer employee who is working outside of the United States is the ability to

elect to exclude “foreign earned income” from gross income under Code Section 911.

The maximum amount of foreign earned income that can be excluded is indexed and is currently \$91,500 per year. It can be elected only by a “qualified individual”, meaning a person whose “tax home” is in a foreign country and who is either:

- A citizen of the US who is a bona fide resident of a foreign country for an entire taxable year; or
- A citizen or resident of the US who, during any period of twelve consecutive months, is present in a foreign country or countries for at least 330 full days of such period.

A qualified individual must elect to exclude foreign earned income on IRS Form 2555, or a comparable form, which must be filed with the individual’s US federal income tax return for the first taxable year for which the election is to be effective. Individuals who expect to be eligible for the exclusion may adjust their federal income tax withholding by completing an IRS Form 673 and filing it with their payroll department.

In addition to the foreign earned income exclusion, a qualified individual may elect to exclude from gross income a “housing cost amount,” which relates to certain housing expenses attributable to “employer provided amounts.”

The term “employer provided amounts” means any amount paid or incurred on behalf of the individual by the individual’s employer that is foreign earned income for the taxable year without regard to Code section 911. Thus, salary payments, reimbursement for housing expenses, or amounts paid to a third party are included. Further, an individual will have earnings that are not “employer provided amounts” only if the individual has earnings from self-employment.

For 2010, the maximum amount of the housing cost exclusion is generally \$12,810 (*i.e.*, 14% of the maximum foreign earned income exclusion for a full taxable year). However, the IRS has issued guidance providing upward adjustments to this maximum in a number of high housing cost locations.

A qualified individual may make a separate election to exclude the housing cost amount on the same form and in the same manner as the foreign earned income exclusion. An individual does not have to make a special election to claim the housing cost amount deduction.

However, the individual must provide, at a minimum, the following information: name, address, social security number, name of employer, foreign country where tax home is established, tax status, qualifying period of bona fide residence or presence, foreign earned income for the taxable year, and housing expenses.

Foreign Tax Credit

Another valuable tax planning device for the US employee who works outside of the United States is the ability to receive a tax credit for foreign or US possession income tax paid or accrued during the taxable year. The credit also applies against taxes paid in lieu of income taxes, a category which includes withholding taxes.

Note that an individual may not take a credit for taxes paid on foreign income that is excluded from gross income under Code section 911 foreign earned income and housing exclusion. The credit is available to any employee who is a US citizen, resident alien of the US, or a resident alien who is a bona fide resident of Puerto Rico during the entire taxable year.

The foreign tax credit is subject to a specific limitation. It is generally limited to the same proportion of the employee's total US tax which the employee's foreign source taxable income -but not in excess of the

entire taxable income - bears to the entire taxable income for the taxable year.

Whether an employee has foreign source taxable income for purposes of this limitation depends on the type of income involved and, in some cases, the residency status of the employee.

For example, with respect to wages, the employee has foreign source income if the services are performed in a foreign country. With respect to interest, the employee has foreign source income if the interest is credited to a bank account in a foreign country or if the employee invests in foreign bonds that pay interest in a foreign currency. Income from the sale of personal property by a US resident is US source income regardless of the place of sale. Similarly, income from the sale of personal property by a nonresident is generally sourced outside the US.

In the event that an employee cannot use all of the foreign tax credit, he is permitted to carry back the unused credit one year and to carry forward the unused credit for ten years.

Participation in Non-US Compensation Programs

In many cases, the employee becomes a participant in a compensation or benefit plan sponsored by an employer in the host country. Such participation may have adverse US income tax consequences, especially in connection with the Code Section 409A and 457A deferred compensation rules.

A complete review of the Code Section 409A and 457A rules is beyond the scope of this discussion. In general, if a person has a legally binding right in one taxable year to receive an amount that will be paid in a subsequent taxable year, that amount is considered deferred compensation for the purposes of Code Section 409A, unless it meets one of the exemptions.

Assuming that no exemption applies, amounts that are considered deferred compensation must comply with various requirements regarding the time and form of the payment, timing of deferral elections, and a six month delay of separation payments made to certain “key employees” of a public company. In addition, there are prohibitions on offshore funding and funding tied to the employer’s financial condition. If the requirements are not met, the deferred compensation amounts will be taxable at the time of vesting and an addition 20% tax will apply.

Although it is unlikely that non-US compensation plans (*e.g.*, retirement plans, equity incentive plans, cash bonus plans) would be designed to comply with Code Section 409A requirements, the IRS does apply the Code Section 409A rules to all plans globally that have US taxpayer participants.

As a first step of the analysis, it is critical to identify all of the potential compensation plans, including equity compensation plans, that will be offered to the employee. The Code Section 409A rules do provide a few specific exemptions for foreign plans, and these provisions should be reviewed in connection with proposed participation in a non-US compensation plan by an employee.

For example, a foreign retirement plan may qualify for an exemption from Code Section 409A as a “broad-based retirement plan”. For US citizens and green card holders, the requirements for this exemption include:

- They are not eligible to participate in a US qualified plan;
- The deferral is non-elective and relates to foreign earned income; and
- The accrual does not exceed the amount permitted under Code Section 415 (*i.e.*, the US qualified plan limits).

The broad based plan must also meet the following requirements:

- The foreign plan must be in writing;
- The foreign plan must be non-discriminatory in terms of coverage and amount of benefit (either alone or in combination with other comparable plans); and
- The foreign plan must provide significant benefits for a substantial majority of the covered employees and contain provisions, or be subject to tax law provisions or other restrictions, which generally discourage employees from using plan benefits for purposes other than retirement and restrict access to plan benefits before separation from service.

There are also Code Section 409A exemptions for plans exempt under a tax treaty, foreign social security plans, and plans that considered funded by means of a trust under the rules, among others.

In addition, Code Section 457A can also apply to deferred compensation earned by a US taxpayer employee working abroad. It limits the ability to offer deferred compensation in cases where employees (who are subject to US taxation) perform services for employers who are considered “nonqualified entities”. In general, employers based in jurisdictions that do not have a corporate income tax will be “nonqualified entities”.

Further, even non-US entities, based in jurisdictions that have an income tax treaty with the United States, and which are subject to a corporate income tax in that jurisdiction may also be considered “nonqualified entities” depending upon the extent of the corporate taxation.

Employers are encouraged to monitor any subsequent IRS guidance on the treatment of expatriate employees for purposes of Section 457A.

US Federal Income Tax – US Inbound Assignments

Employees who are sent to work in other countries even for relative short assignments may nonetheless be subject to local income tax on the compensation they earn for working abroad, unless there is a local tax exemption for such limited work or unless the provision of an income tax treaty provides an exemption. In the US, for example, the Internal Revenue Code provides a limited exemption for employees working on a short term basis, but it is practically of no use since the compensation earned during the period of assignment cannot exceed \$3,000. Other jurisdictions may have similar statutory exemptions for short-term assignments, but generally speaking they are rare.

Taxation as a “Resident”

The principal concern for an employee who comes to work in the United States (and who is not a US citizen or does not want to become a US citizen) is whether he will be taxed as a resident alien or a nonresident alien.

As a resident alien, he will be taxed in the same manner as a US citizen, namely, all worldwide income, including any compensation paid or earned outside of the US, will be subject to US federal income tax. A resident alien is able to offset this US tax liability by a tax credit or a tax deduction for foreign income taxes paid, subject to certain limitations.

As a nonresident alien, he will be taxed only on income “effectively connected” with the conduct of a US trade or business at the same rate and in the same manner as US citizens and residents, but with some limitations (*e.g.*, not able to file returns jointly with a spouse). In

addition, there will be a flat 30% tax rate on certain investment and other fixed or determinable annual or periodic income from sources within the US, that is not “effectively connected” with the conduct of a US trade or business.

The employee’s performance of services in the US will be deemed to be the conduct of a US trade or business. The compensation he receives therefore will be “effectively connected” with a US trade or business and will be taxable at the same rate as US citizens and residents.

In general, an employee will be treated for tax purposes as a “resident alien” if the employee:

- Is lawfully permitted to reside permanently in the US (*i.e.*, the “green card” test); or
- Is in the US a substantial amount of time (*i.e.*, the “substantial presence” test).

The “green card” test is much as its name suggests. This covers foreign nationals granted alien registration cards.

The “substantial presence” test is satisfied if, in general, the employee is present in the US for:

- At least thirty-one days during the current calendar year; and
- The sum of days present in the US during the current calendar year, plus 1/3 of the days present in the preceding year, plus 1/6 of the days present in the second preceding year equals or exceeds 183 days.

There is effectively an exception to the “substantial presence” test if a foreign national is present in the United States on fewer than 183 days and if has a tax home and closer connection to a foreign country.

In the event the inbound executive does not satisfy either of the two tests described above, it is possible to elect to be treated as a resident under certain circumstances.

A nonresident alien who is temporarily present in the US as a nonimmigrant under the foreign student F visa or exchange visitor J visa may exclude from gross income compensation received from a foreign employer or an office maintained outside of the US by a US person.

In addition, wages, fees or salary of an employee of a foreign government or an international organization are not included in gross income for US tax purposes if: the employee is a nonresident alien or a citizen of the Philippines, the services as an employee of a foreign government are similar to those performed by employees of the US government in foreign countries, and the foreign government grants an equivalent exemption to US government employees performing services in that country.

Finally, nonresident aliens may be entitled to reduced rates of, or exemption from, US federal income taxation under an applicable income tax treaty between the country of which they are residents and the US.

A nonresident alien who claims an exemption from US federal income tax under a provision of the Code or an applicable Income Tax Treaty must file with the employer a statement giving name, address and taxpayer identification number, and certifying the individual is not a citizen or resident of the US and the compensation to be paid during the tax year is, or will be, exempt from income tax, giving the reason for the exemption. If exemption from tax is claimed under an Income

Tax Treaty, the statement must also indicate the provision and tax treaty under which the exemption is claimed, the country of which the nonresident alien is a resident, and enough facts to justify the claim for exemption.

Participation in Non-US Compensation Programs

As previously discussed, Code Section 409A has very broad application. In the case of employees who come to work in the United States, there is also a concern that certain non-US plan benefits could be subject to the adverse consequences of Code Section 409A. Accordingly, the employee's participation in non-US compensation programs must be reviewed for Section 409A compliance the same as for US programs.

For example, some non-US stock option plans may not meet the requirements of the fair market value grant exemption from Code Section 409A. Stock option plans that provide for an exercise price that is less than the fair market value on the date of grant may have this problem. If the employee becomes a "resident alien" of the US while working here, then grants under such plans may be particularly problematic.

Notwithstanding, there are some transitional rules under Code Section 409A in regard to deferred compensation which vests prior to the employee's becoming a US tax resident. Again, as in the case of all US employees who go work abroad, it is critical to identify all of the plans and arrangements which could be potentially subject to taxation under Code Section 409A in advance of an employee's assignment to the United States.

US Social Security: FICA and Other Implications

One of the major concerns for an employee working outside of his home jurisdiction is whether compensation will be subject to local

social insurance taxes (as most of the world calls it) or Social Security (as the US calls it). The concern arises from the employer's standpoint as well, since in many jurisdictions social insurance taxes are imposed both on the employee and the employer.

Social Security taxes in the United States are relatively low, in comparison with those of other jurisdictions, so with respect to a US employee who is working abroad, more often than not there is a desire to remain covered by US Social Security and avoid the imposition of local social insurance taxes, where possible. Continuing to be covered by US Social Security also allows the employee to build up his eligibility for a maximum Social Security benefit upon retirement.

In general, Social Security contributions must be paid on the earnings of a US citizen or resident alien working for an American employer anywhere in the world. An "American employer" is defined as:

- The US or any instrumentality thereof;
- An individual who is a resident of the US;
- A partnership, if two-thirds or more of the partners are residents of the US;
- A trust, if all of the trustees are residents of the US; or
- A corporation organized under the laws of the US or any state.

Special new rules apply to companies that contract with the US federal government so that certain foreign entities may also be considered "American employers" for purposes of this rule.

Thus, a US employee who is seconded to work abroad, and thus continues to be employed by the home company, will remain covered

by US Social Security and FICA taxes will be withheld from his compensation as a result.

Similarly, a US employee who works outside the United States for a foreign branch or division of a US employer will remain covered by US Social Security, since technically, a branch or division is a mere extension of the home company.

On the other hand, a US citizen or resident who is employed outside of the US by an employer who is not an “American employer” will not be remain covered by the US Social Security system and thus FICA taxes will not be withheld from his compensation.

Notwithstanding, there is a special election available to certain employees to remain covered by US Social Security while working abroad. If the a US citizen or resident is working for an “American employer”, as defined above, and if the US employee is sent by that American employer to work for a “foreign affiliate”, as defined below, , then the American employer may enter into a voluntary agreement under Section 3121(l) of the Code to continue the US Social Security coverage of that individual. A “foreign affiliate”, is defined as a foreign entity in which an American employer owns at least a 10% interest. This voluntary, but irrevocable, agreement in effect extends Title II of the Social Security Act to service performed outside of the US by *all employees* who are citizens or residents of the US, except with respect to service or remuneration that would be otherwise excluded from the terms “employment” or “wages” as defined in Code Section 3121 had the service been performed in the US.

Under this voluntary agreement, the American employer pays the employer and employee portion of FICA taxes that would be imposed if such wages were subject to FICA taxes under the general rules, including any applicable interest and penalties. There is no legal requirement that the employee reimburse the American employer for

the employee's share of the tax, although some companies do in fact require such reimbursement.

Totalization Agreements

Just as the expatriate might want to avoid the problem of being subject to income tax by more than one jurisdiction, an employee and his employer will also want to avoid the problem of double social security coverage.

Double coverage may occur when an employee remains covered by the social insurance taxes of both his home jurisdiction and the host jurisdiction. For example, a US employee who is employed by an American employer or "foreign affiliate" of an American employer will remain covered by the US Social Security system.

At the same time, a host jurisdiction may impose its social insurance taxes on the employee's compensation merely by the fact that the employee works there (a fairly common approach in non-US jurisdictions). In such a case, double contributions to both social security systems may be required on behalf of the employee and also by the employer, reducing the mobile employee's compensation and increasing the company's social tax burden.

A further problem that may be encountered by the outbound mobile employee concerns fragmented social security coverage. A US citizen or resident who has worked for less than 10 years and who transfers employment to a foreign country will not continue to qualify for a maximum US Social Security benefit while working for the foreign employer, since he no longer continues to earn "quarters of coverage" to qualify for a US Social Security benefit.

Further, if the expatriate's employment history includes a lot of temporary assignments in different foreign jurisdictions, the employee

may find at the end of his career that the employee does not qualify for a social security benefits under any country's system.

To address these problems, many jurisdictions have entered into a type of international agreement with other jurisdictions called a "Totalization Agreement." A Totalization Agreement provides a set of rules to determine when employment will be covered by which country's social security system to avoid the problem of double coverage. Note that a Totalization Agreement does not change the domestic rules of a country's social security system. It does not impose coverage if employment would ordinarily not be covered.

In the case of the United States, there are 24 such agreements. In general, each Totalization Agreement follows the "territoriality" principle. That is, employment for purposes of social insurance taxes is covered only by the laws of the country in which the work is performed.

An exception to this territoriality rule exists where the employee is sent by the home country employer to be on temporary assignment in the other jurisdiction. In that case, the employee will be covered by the social security system of the home country. A "temporary assignment" is generally defined to be one expected to last five years or less. Note there are some variations to these rules, so it is recommended to check the applicable Totalization Agreement to determine what provisions apply in each case.

With regard to benefits, a Totalization Agreement permits an employee to combine or "totalize" periods of coverage for purposes of determining eligibility for coverage. For example, to qualify for a minimum US Social Security benefit under the Totalization procedure, the executive must have at least six quarters of coverage in the United States system. The Totalization Agreements contain parallel provisions for each country, so that if the combined or "totalized" periods of coverage are sufficient to meet the eligibility

requirements for benefits, then *pro rata* benefits are payable from each country's social security system.

In the event an employee wishes to take advantage of the "temporary assignment" exemption, he will need to obtain a certificate of coverage from the responsible authorities in his home jurisdiction to verify his continued coverage while working abroad.

In the United States, an application for such a certificate must be made to the Social Security Administration, and must contain the following information: full name of the outbound mobile employee, date and place of birth, citizenship, country of permanent residency, social security number, place of hire, name and address of employer in the US and the other country, and dates of transfer and anticipated return. If the employee is transferring to France, the employee must also certify that there is medical coverage under a private insurance plan, since France imposes this certification requirement on anyone who seeks exemption from French social security tax.

Social Security Implications for Inbound Assignments

In the case of an employee who is coming to work in the United States, such employment will be subject to US social security coverage unless the performance of services does not come under the definition of "employment" for Social Security purposes. There is a specific exemption for nonresident aliens who are here in the US under the F or J visa, for example.

An inbound employee who does not qualify for those exemptions from US Social Security will be subject to FICA wage withholding on compensation unless an exemption under a Totalization Agreement in effect with the country of origin can be claimed. For example, if the employee is here on a "temporary assignment", then the applicable Totalization Agreement can be relied upon as an exemption from the application of US Social Security taxes. In that event, the employee

who need to produce a certificate of coverage from the home country authority to claim the exemption.

Selected Concerns from the Employer's Perspective

Availability of Corporate Income Tax Deduction

One of the primary issues from the employer's standpoint is whether the costs of the expatriate's compensation are deductible, and if so by which entity. Under US federal income tax principles, the entity that is the common law employer, that is, the entity that has the right to direct and control the activities of the employee, is entitled to the income tax deduction. Note this principle may be similar in non-U.S. jurisdiction, so it would be prudent to consult with a tax advisor on any tax deduction question.

Accordingly, if the employee is seconded to work abroad for another company, he remains a common law employee of the sending employer, and that employer is entitled to deduct the costs of the employee's compensation. Similarly, if the employee's employment is in fact transferred to another company (that is, another corporate entity, such as a subsidiary, a parent company, or a brother-sister company), it is that other entity that has the right, under US federal income tax principles. Even if the company is related to the employee's original employer, the original employer is not entitled to deduct the costs of compensation because the benefit to such employer is deemed to be only an indirect or derivative benefit. For these purposes, a division or branch is deemed not to be a separate "company" for income tax deduction purposes.

Permanent Establishment Risk

One key issue that always needs to be considered in structuring international assignments or transfers is whether the structure will inadvertently create a "permanent establishment" whereby the

employing entity is considered to be doing business in the host country and subject to corporate income tax on an allocable amount of its net income. In the case of short-term assignments, or “informal” assignments, where the employee is seconded to work in another jurisdiction (and thus remains technically employed by the seconding company) this risk may be higher if the short-term assignment structures are not specifically reviewed by tax counsel.

For example, employees or technical consultants may be sent to a host country for varying lengths of time in response to compelling business needs without any formalized review. Such quick decisions raise the potential risk of the home company inadvertently creating a permanent establishment in the host country. Local tax agencies are quick to assume that a company has created a taxable local presence if the home company has personnel with negotiating or contracting powers maintains technical support services outside the home country, or otherwise pursues revenue-producing operational activities.

A company that unwittingly creates a permanent establishment abroad often finds itself obligated to file tax returns with a foreign tax agency, to observe local accounting standards for foreign tax purposes, and to pay higher taxes on a worldwide basis. The existence of a permanent establishment may also trigger registration, filing, and publication obligations for the company.

The activities that could constitute a permanent establishment vary by jurisdiction, based on income tax treaty provisions, and the structures of the employment relationships. The concept of “permanent establishment” has been undergoing significant changes following guidance from the Organization of Economic Community and Development (“OECD”).

Tax Equalization and Tax Protection Programs

In order to minimize the expatriate's potential exposure to double income taxation by both the home country and the host country, the employer can implement a tax equalization or tax protection program. Such a program will not change the actual tax liabilities in either country, but it will provide a consistent approach for handling the complex income tax situation of any particular expatriate.

A tax equalization program provides that the employee on foreign assignment will pay no more and no less than the income taxes (the "stay-at-home-taxes") he would have paid in the event he had not gone on a foreign assignment. It requires the employee to pay a hypothetical tax equal to the stay-at-home-taxes. The hypothetical tax is computed at the beginning of the year, and an amount equal to one twelfth of the hypothetical tax is withheld from the employee's income each month. At the end of the year, the employee's actual income taxes, both US and foreign, are compared to the hypothetical tax. If the actual taxes are *more* than the hypothetical tax, the employee is reimbursed for the difference. If the actual taxes are *less* than the hypothetical tax, the mobile employee must re-pay the difference back to his employer. This approach assures that an employee who moves from a high tax jurisdiction to a low tax jurisdiction does not enjoy a windfall by virtue of the low tax rates.

A tax protection program also involves the calculation of a hypothetical tax. However, it is intended only to reimburse the employee in the event the employee incurs additional tax liability as a result of the foreign assignment (for example, where he ends up working in a higher taxing jurisdiction).

Thus, under a tax protection program, if at the end of the year the actual taxes are more than the hypothetical tax, the mobile employee is reimbursed for the difference. If the actual taxes are less than the hypothetical tax liability, the mobile employee is not required to pay anything back to his employer and would realize a benefit.

There are many variations on tax equalization and tax protection programs. Some employers cover state and local taxes as well as US federal and foreign income taxes. What type of income is included, and what is excluded, is dependent on the company and the discussions it has with its tax advisors.

Since tax equalization and tax protection programs represent payments of compensation over a number of tax years, for US taxpayer employees there are potential Code Section 409A issues. The company providing such a program needs to ensure that the tax equalization/tax protection program complies with Code Section 409A. Often, consultation with tax counsel is needed for this purpose.

Whatever changes are made to comply with or be exempt from Code Section 409A should be reflected by appropriate changes to the language in the policy document.

Given the complexity of the hypothetical tax calculation, some companies will engage the services of an accounting firm to make the necessary determinations and prepare the various income tax returns for each affected employee. In this way, the employer can be assured that its employees are handled consistently and that their tax returns are prepared and filed on time.

Budgeting and Cost Projections

Given the significant incremental costs generally related to an international assignment (*e.g.*, employer paid housing, additional allowances, tax equalization, home leaves, transition allowances), the company should prepare cost projections of the total expected international assignment cost including estimates of US and foreign income tax, in cases where the employee is eligible for either tax equalization or tax protection.

Compliance: Withholding and Reporting

As more multinational companies focus on compliance-related issues, it is not surprising that the area of global mobility has received some attention. In particular, companies often look to review their processes and procedures for making sure that the appropriate taxes (income, social taxes, *etc.*) are withheld from their employees' pay, and that the appropriate reporting of such pay (which differs from country to country) is being done. More often than not, withholding and reporting problems occur when compensation is paid outside of the jurisdiction where the employee is working, or there is some internal confusion regarding which entity is obligated to withhold on compensation and at what applicable rate. Given the prevalence of global pension and compensation programs, it is not surprising that the details regarding individual participants who are working in perhaps dozens of jurisdictions sometimes become complex and burdensome to monitor.

Notwithstanding these challenges, vigilance is paramount. Local tax authorities have, based up recent audits and news accounts, announced their intention to focus more on the activities of expatriates and their employers to make sure that compliance with applicable withholding and reporting obligations is maintained. As local governments search for more revenue to address their fiscal budget concerns, they will look harder at this area.

International Employment Transfer Checklist

Employee Information:

Employee Name:

Position:

Home Location:

Host Location:

Manager(s):

Location(s) of Manager(s):

Duration of International
Transfer:

Employee's Citizenship (please
also indicate if employee holds
permanent residence/landed
immigrant status in any other
country):

Employee's Current Tax
Residency:

Current Employee Benefits:

Planned Assignment Start Date:

Planned Assignment End Date:

Compensation (currency, amount and source):

Any Accompanying Family Members (names, relationships, citizenship and any permanent residence/landed immigrant status details):

Employment Structure:

Options:

- Assignment/secondment
- Transfer
- Transfer followed by assignment/secondment
- Transfer with dormant home country employment relationship
- Dual employment?
 - Consider pro's and con's of each option
 - Once structure has been determined, draft appropriate documentation

- Determine applicable employment laws

Individual Income Tax:

- Applicable tax treaty?
- Home location withholdings required?
- Host location withholdings required?
- Tax equalization?

Social Security:

- Applicable social security treaty?
- Home location withholdings required?
- Host location withholdings required?

Permanent Establishment / Doing Business:

- Local entity required?
- Permanent establishment exposure (applicable tax treaty)?
- Intra-company secondment agreement?
- Doing business exposure?

Benefits / Equity:

- Can/should home country benefits be maintained (applicable plans)?

- Can/should host country benefits be obtained (applicable plans)?
- Determine impact of assignment on equity (existing grants / new grants)?

Immigration:

- Can visa/resident permit/work permit be obtained (options)?
- What additional information/documents are needed?
- How long will it take to secure approvals?
- Any steps required to protect current resident status, if any?
- Any steps requires to protect eligibility to naturalize, if relevant?

Others:

- If an international transfer does not appear the right option, are there alternative staffing models (*e.g.*, local hires)?

Global Mobility Questionnaire

In general

Specific requirements vary, depending upon the countries and visa involved. The purpose of this questionnaire is to identify the documents and information generally required for most assignments. Additional documentation and information may be needed as the visa process continues due to variations in immigration and employment authorization laws in various countries.

The Applicant

1. Name
2. Contact information (including email and telephone/fax numbers)
3. Complete copy of passport(s)
4. Updated resume (include a description of all previous jobs, including general information about the number and titles of people supervised, and the dates of employment)
5. Copies of diplomas and/or transcripts for university and advanced degrees
6. ***Detailed*** description of the applicant's current job duties (including the number, titles, and duties of any employees the applicant supervises)
7. Copy of birth certificate (original may be required later)
8. Copy of marriage certificate, if applicable (original may be required later)

9. If any accompanying family members, please provide:
- Relationship to primary applicant (*e.g.*, spouse, child)
 - Complete copy of relative's passport(s)
 - Copy of birth certificate (original may be required later).

Proposed assignment:

1. **Detailed** Description of the applicant's proposed job duties (including number, titles, and duties of any supervised employees), compensation (amount and source of payment)
2. Proposed dates of assignment
3. Address of proposed new job site
4. Name of proposed employer abroad
5. Relationship to current employer, if any (*e.g.*, parent, subsidiary, branch office)
6. Name of company contact (including email and telephone/fax numbers).

Section 3 Country Guide

Argentina

Executive Summary

Argentine migratory regulations provide different alternatives to facilitate foreigners rendering services, either as employees of local Argentine entities or as employees of foreign companies transferred to Argentina. The regulations contemplate temporary and permanent residence permits. The foreigner's nationality and country of residence will determine what procedure must be followed (in certain cases, more than one solution could be worth of consideration). Requirements and processing times vary by visa and residence classification.

Key Government Agencies

The “*Dirección Nacional de Migraciones*” (National Migration Bureau) is the governmental office in charge of issuing residence permits.

The “*Ministerio de Relaciones Exteriores, Comercio Internacional y Culto*” (Ministry of Foreign Relations) is responsible for issuing visas at the Argentine consular offices outside Argentina.

The “*Registro Nacional de las Personas*” (National Registry of Individuals) issues the national identification cards (“*Documento Nacional de Identidad*” or “*DNI*”).

The “*Administración Federal de Ingresos Públicos - AFIP*” (Federal Tax Authority) is involved in the process after the visa or residence is granted, to issue the “*CUIL*” or workers' identification number, to allow the foreigners employment by a local entity.

Inspections and admission of foreigners is conducted by the National Migration Bureau and the Federal Police at Argentine ports of entry. Investigations and enforcement actions involving employers and foreign nationals are handled jointly by the National Migration Bureau and the Ministry of Labor. These agencies are all part of the National Executive Branch.

Introduction

According to Argentine Migratory regulations, any individual assigned to render services in Argentina must have the corresponding work authorization issued by the National Migration Bureau.

If a foreign individual who is a national of the MERCOSUR or its associated countries (Uruguay, Brazil, Paraguay, Chile, Colombia, Perú, Bolivia, Venezuela, and Ecuador) intends to work in Argentina for more than thirty days, he/she must obtain his/her residence directly in the National Migration Bureau.

If a foreign individual who is not a national of the MERCOSUR or its associated countries intends to work in Argentina for more than thirty days, he/she should obtain an Entry Permit and the corresponding Working Visa.

Foreign individuals who intend to work in Argentina for less than thirty days may obtain Temporary Work Permits.

Employment Assignments

MERCOSUR Citizens

If a foreign individual who is a national of the MERCOSUR or its associated countries intends to work in Argentina, he/she must obtain his/her residence directly in the National Migration Bureau.

The formalities are conducted on a strictly individual basis and all the applicants shall appear personally at the National Migration Bureau.

A Provisional Residence Certificate will be delivered to the applicant and will authorize the applicant to leave and re-enter the country.

The Temporary Residence with a term of two years will be granted to the applicant about 90 days thereafter. After the expiration of such two-year term, the applicant may apply for the Permanent Residence.

Once the Temporary Residence has been obtained, the applicant will be entitled to conduct all the proceedings necessary to obtain the provisional National Identification Cards (*“Documento Nacional de Identidad”* or *“DNI”*) from the *“Registro Nacional de las Personas”* (National Registry of Individuals).

Exceptionally, this procedure can be followed for nationals who are not of the MERCOSUR or its associated countries. In this case, the applicant will be granted the Temporary Residence with a term of one year, renewable upon expiration for an additional one year. In turn, upon expiration of this second year, it can be renewed for an additional one year. Upon two renewals, the applicant may apply for the Permanent Residence.

Non-MERCOSUR Citizens

If a foreign individual who is not a national of the MERCOSUR or its associated countries intends to work in Argentina, he/she should obtain an Entry Permit (*“Permission”*) and the corresponding Working Visa (*“Visa”*), provided always that the individual has been hired or employed by an Argentine company (*“Calling Entity”*) and the latter has been registered as such. We expand on these issues below.

Registration of the Calling Entity

Calling Entities must register themselves at the National Single Register for Foreigners (*Registro Nacional Único de Requirientes de Extranjeros* - “RENURE”).

The registration with RENURE is not required if the foreigner is a national of the countries that are members of the MERCOSUR or its associated countries.

The application must be made in writing and filed with RENURE. This registration must be made only once and is free of charge. The Calling Entity will receive a registration number; all future admission applications must be filed with such number.

The Calling Entity that requests its registration in the RENURE must provide the following documentation: (i) registration with the Public Registry of Commerce; (ii) bylaws; (iii) minutes evidencing the last appointment of corporate officers; (iv) Balance Sheet corresponding to the last fiscal year, duly certified by the Economics Professional Council (*Consejo Profesional de Ciencias Económicas*); (v) taxpayer’s identification number (*Clave Única de Identificación Tributaria* - CUIT); (vi) Income Tax registration; (vii) Value Added Tax registration; (viii) Gross Receipt Tax registration; and (ix) registration as employer in the public social security system.

First Stage - Permission

The Calling Entity must require the National Migration Bureau to grant the foreign individual a Permission which will allow him/her to obtain the Visa at the Consulate of his/her place of residence or country of origin. The following documentation must be filed with the National Migration Bureau along with such application:

1. Taxpayer’s Identification Number (*Clave Única de Identificación Tributaria* - CUIT) of the Calling Entity.

2. Receipts of payment of the VAT, Gross Receipt, and Social Security contributions.
3. Last income tax return.
4. Copy of the passport of the foreigner and of the members of his/her family who are to require the Permission.
5. An original marriage certificate (if appropriate) per spouse.
6. A certified copy of the birth certificates of the foreigner's children who are to apply for the Permission.
7. The foreigner's resume in Spanish.
8. An employment contract, valid for at least one year, to be executed between the Calling Entity and the foreigner, in accordance with Argentine labor laws. The employment contract must specify that the labor relationship shall be conditioned to the granting of the Visa. The employment contract should be solely signed by a representative duly authorized of the Calling Entity (the foreigner should sign it after obtaining the Visa) and must be certified by a notary public and legalized by the Notaries' Association. If the foreigner shall hold an executive office, the Calling Entity should also file the relevant minutes evidencing his/her appointment and the distribution of the offices.
9. A letter of the Calling Entity stating the description of the activities, the tasks to be performed by the foreigner in Argentina and the reasons of the Calling Entity to hire him/her instead of an Argentine citizen. The letter should be signed by the legal representative of the Calling Entity and duly certified by a notary public.

10. Power of attorney granted by the Calling Entity to obtain the Permission from the National Migration Bureau.
11. A number of personal data of the foreigner.

This first stage finishes once the Permission has been issued.

C. Second Stage - Visa

This stage takes place at the Argentine Consulate with jurisdiction over the place of residence or nationality of the foreigner.

The foreign individual should require the granting of the Visa by filing the Permission along with the following documents:

1. Passports with a minimum validity of one year (and copies of all its pages) of the foreigner and of the members of his/her family who are to request a visa.
2. Two original birth certificates of the foreigner and of the members of his/her family who are to request a visa.
3. An original marriage certificate per spouse.
4. The foreigner's academic certificate, diploma or degree.
5. A certificate of criminal records for individuals over 16 years old, issued by the countries in which the foreigner has resided over the last five years before arriving Argentina.
6. A personal 3/4 right profile format photograph.
7. Consulate fee.

Documents mentioned in 2, 3, 4 and 5 must be duly translated into Spanish and previously legalized by the Argentine Consulate with jurisdiction over the place of issuance or by means of the “Apostille” (The Hague Convention of 1961, which overrules the mandatory legalization of public instruments).

Once all the documentation has been filed, the Consulate shall grant the Visa for a one year term, renewable upon expiration for an additional one year. In turn, upon expiration of this second year, it can be renewed for an additional one year. Upon two renewals, the applicant may apply for the Permanent Residence.

Transfer Visas (*“Visas de Traslado”*)

Multinational companies seeking to temporarily transfer foreign employees to Argentina under an assignment or secondment agreement must file a request for the so-called Transfer Visa or “*Visa de Traslado*”. This visa is initially valid for assignments of one year and can be renewed.

The requirements for this Transfer Visa are basically the same as the one set forth above for Non-MERCOSUR Citizens. The difference is that the foreigner will not be hired or employed by an Argentine company; instead, he/she will maintain the employment relationship with the foreign entity and will be assigned to render services in Argentina under an assignment or secondment agreement.

The Calling Entity should request the corresponding Permission and Visa with the National Migration Bureau. In this case, instead of an employment contract, the Calling Entity will have to file a letter stating the description of the activities, the tasks to be performed by the foreigner in Argentina and specifying the reasons to transfer a foreigner instead of hiring an Argentine citizen.

National Identification Card (*“Documento Nacional de Identidad” - DNI*)

Once the Temporary Residence has been obtained, the applicant and his/her family should obtain the DNI from the National Registry of Individuals (*Registro Nacional de las Personas*).

The DNI is the local identification document, which is necessary to obtain a definitive registration with the Federal Tax Authority, open bank accounts, register with health care providers, and obtain as a local driver's license, among others. The DNI shall be granted to the applicant for the same term of the Visa and shall only be renewed once the Temporary Residence has been extended.

Training

A special transitory residence visa will enable foreign employees to receive training in Argentina for brief periods of time.

Such transitory residence is granted for the term of thirty days, renewable upon expiration.

Business Travel

Argentine migratory regulations establish that citizens from countries specifically included in the applicable regulations, who declare upon their arrival that they are businessmen, may enter under a special category and stay in the country for a term of up to three months, that may be extended for another three months upon its expiration.

For example, United States citizens coming to Argentina as businessmen do not require any visa if, upon entering the country, they declare their condition as businessmen and their stay is no longer than 180 days. When they enter Argentina they will have a stamp in their passports for three months renewable for another three months.

This category authorizes a limited number of commercial and/or professional activities in Argentina, including consultations, negotiations, business meetings and conferences. Employment under this category is not authorized.

Other Comments

There are additional visas less frequently used for global mobility assignments, including: student/study visas; retiree visas; pensioners; sports; *etc.*

Australia

Executive Summary

The advent of globalization has led to a dramatic increase in the movement of skilled workers seeking employment opportunities in different countries. Despite the current economic climate, Australia is continuing to experience a skills shortage which has resulted in the consistent popularity of employment visas.

Key Government Agencies

The Department of Immigration and Citizenship (“DIAC”) is the responsible government department that processes all visa applications. Depending on the type of visa applied for and the location of the applicant, applications may be lodged in or outside Australia. If lodged outside Australia, a DIAC officer within a local Australian mission (*e.g.*, an Australian Embassy, Australian High Commission or Australian Consulate) will process the application.

In addition to visa processing duties, DIAC is responsible for monitoring the activities of businesses that sponsor foreign national staff for work visas. DIAC conducts audits every 6 to 12 months in order to ensure that employers of foreign national staff are complying with their immigration obligations. If non-compliance is established, DIAC has specific powers to sanction the employer (and the foreign employee, if applicable), which may result in serious ramifications for the business and reputation of the employer.

Current Trends

The Australian government is placing increasing emphasis on employment visas and compliance. Reforms in 2008 and 2009 indicate continued focus on these issues in order to better monitor employers and prevent worker exploitation.

The government is attempting to achieve a delicate balance between addressing the skill shortages in the Australian labour market and ensuring that this increased employment activity does not result in a breach of immigration and employment laws. Employers of foreign national staff working without a valid visa or in breach of their visa conditions may be subjected to severe civil and criminal penalties, including imprisonment of up to five years in circumstances where the employee is being exploited. Exploitation is defined as being a condition of forced labor, sexual servitude or slavery.

In addition to protecting the rights of foreign national staff, the government is tightening the requirements of employment visas. Employers in many cases are now required to establish that they have either met the requisite ‘training benchmark’ in relation to their Australian staff or that they will implement an auditable ‘training plan’ within the next 12 months. Exceptions are in place for employers located outside Australia.

Another key trend is the expanding requirement for visa applicants to meet specific English language requirements. While many visa streams have flexible exceptions to this requirement, there is a movement by the government to improve the English language ability of all foreign nationals seeking to live and work in Australia.

Business Travel

Business Electronic Travel Authority

The Business Electronic Travel Authority (“Business ETA”) is an electronic visa designed to facilitate travel by foreign nationals of countries who, on the basis of statistical data, have shown to be genuine business visitors and are unlikely to overstay their visas.

Foreign nationals with passports from the following countries are eligible for a Business ETA:

Andorra	Iceland	Portugal
Austria	Ireland	Republic of San Marino
Belgium	Italy	Singapore
Brunei	Japan	South Korea
Canada	Liechtenstein	Spain
Denmark	Luxembourg	Sweden
Finland	Malaysia	Switzerland
France	Malta	Passports issued by the authorities of Taiwan
Germany	Monaco	United Kingdom (including BNO)
Greece	Netherlands	United States of America
Hong Kong SAR	Norway	Vatican City

Primarily, the Business ETA is designed for business visitors who wish to undertake business-related activities such as attending conferences, seminars, business meetings or training sessions.

The Business ETA allows multiple trips to Australia and is normally valid for use for a period of 12 months. Visa holders may enter Australia and stay for a maximum of three months on each occasion (with no limit on the number of entries that may be made). While this visa does not generally allow employment, visa holders may engage in work in exceptional circumstances, that is, if the work is urgent, highly skilled or specialized in nature and for no more than six weeks.

Subclass 651 eVisitor Visa

The Subclass 651 eVisitor Visa (“651 visa”) is also an electronic visa with the same effect and operation as the Business ETA. The holder of this visa may enter Australia for a maximum of three months on each occasion during the 12 month life of the visa. This visa also allows for business activities and employment in exceptional circumstances as outlined above.

This visa is available to the following list of, generally European, passport holders:

Andorra	Iceland	Romania
Austria	Ireland	Republic of San Marino
Belgium	Italy	Slovakia
Bulgaria	Latvia	Slovenia
Cyprus	Liechtenstein	Spain
Czech Republic	Lithuania	Sweden

Denmark	Luxembourg	Switzerland
Estonia	Malta	United Kingdom
Finland	Monaco	Vatican City
France	Netherlands	
Germany	Norway	
Greece	Poland	
Hungary	Portugal	

The main benefit of this visa over the Business ETA is that the foreign national may make an online application without requiring the assistance of a travel agent or airline. There is also no application fee.

Subclass 456 Business Short Stay Visa

The subclass 456 Business Short Stay visa (“456 visa”) is similarly intended for persons seeking a short-term stay in Australia for business purposes but who are not eligible for a Business ETA or a 651 visa (*e.g.*, nationals of India, the Republic of South Africa, and the People’s Republic of China). This visa may be granted for travel to Australia for multiple trips over an extended period (such as one or more years) with a maximum stay of three months on each arrival. The 456 visa is similar to the Business ETA and the 651 visa in that the visa conditions do not permit employment except in exceptional circumstances.

Training

Subclass 442 Occupational Trainee Visa

The subclass 442 Occupational Trainee visa (“442”) is for foreign nationals seeking to enhance their skills or education by undertaking structured workplace based training in Australia. The visa is primarily targeted towards young professionals seeking to further their career and develop their skills in a practical environment.

However, it may also be utilized by overseas students who must undergo a period of workplace based training in order to satisfy specific course requirements. Visa applicants may include their spouse and dependent children.

The 442 visa requires the trainee to be nominated by an Australian business or government organization. The training provided must be a clearly structured program that is workplace based. It must also be designed to improve the trainee’s skills or area of expertise without adversely affecting the occupational training opportunities of Australian workers.

Employment Assignments

Subclass 457 Business Long Stay Visa (Temporary)

Australian and foreign businesses which meet certain requirements can be approved to sponsor foreign nationals for paid employment through the Subclass 457 Business Long Stay visa (“457 visa”). The 457 visa provides temporary residence in Australia to foreign nationals and their families for up to four years (with unlimited options to renew). The 457 visa is intended for skilled workers with the qualifications and/or experience required to accommodate Australia’s labour shortages.

Foreign businesses with or without an operating base or representation in Australia can sponsor foreign nationals to work in Australia for various purposes, including the establishment of business operations in Australia or the fulfillment of contractual obligations.

Australian businesses, whether incorporated or unincorporated, can also sponsor foreign nationals for a 457 visa. In respect of Australian business sponsors, DIAC is careful to assess whether the business provides training and professional development opportunities to Australian employees and whether the level of training expenditure meets the requisite benchmarks at the time of assessment.

The 457 visa also accommodates related corporate entities in circumstances where it may be necessary for the foreign national to be sponsored by a business other than the direct employer or end user. This is possible in cases where the employer is related to the sponsoring business (*e.g.*, an Australian parent company sponsors a foreign national for a 457 visa to work as an employee of its smaller, newly established Australian subsidiary company). Note, however, that there is an important exception to this requirement in instances where the sponsor will be a foreign business. In these circumstances, the foreign national must at all times remain in the employment of the foreign business and cannot be transferred to another related business, whether Australian or foreign.

As part of the application process the sponsoring business, whether foreign or Australian, is required to give undertakings to DIAC in respect of the foreign national employees they sponsor. These ‘sponsorship obligations’ mirror the general obligations of employers under Australian employment and taxation laws but also consist of additional responsibilities specific to subclass 457 visa holding employees. The obligations cannot be waived nor can sponsors contract out of them as they are given by the sponsor to DIAC, not by the sponsor to the employee.

The obligations to be complied with include an obligation to be responsible for the cost of return travel of the foreign national employee and an obligation to cooperate with DIAC in relation to information requests and on-site visits by DIAC inspectors. These obligations may also extend to the foreign national employee's family members if included on their 457 visa. Note, however, that many of these obligations cease once the foreign national employee has ceased employment or obtained another Australian visa.

As of 14 September 2009, new civil penalties apply in relation to breaches of the obligations. These penalties may reach as high as AUD33,000 for a corporation or AUD6,600 for an individual.

Foreign national employees applying for the 457 visa must be appropriately skilled and/or experienced in order to be eligible. University qualifications, although mandatory for some occupations, may not be required if the applicant can show that they have a specified level of relevant work experience (typically three to five years depending on the occupation).

Applicants must also demonstrate functional English language ability. Exemptions are available in certain situations, such as where the applicant is a native English speaker, the role is listed as exempt, the base salary meets the prescribed minimum or the applicant has completed at least 5 consecutive years of full time secondary and/or tertiary education where all instruction was delivered in English.

Employers seeking to sponsor a foreign national will also be required to demonstrate that the foreign national will be paid in accordance with the local labour market rate for their role, skills, experience and location of employment. This may be demonstrated in a number of ways, the most common being by comparative analysis of existing Australian employees performing an equivalent role within the business.

If the foreign national employee seeks to change employers in Australia, approval must first be obtained from DIAC in the form of a nomination application through sponsorship by the new employer or alternatively, the employee may apply for a new 457 visa.

Employer Nomination Scheme Visa (Permanent)

Australian businesses can sponsor skilled foreign nationals for permanent residence under the Employer Nomination Scheme (“ENS”). The ENS visa provides foreign nationals and their families with the opportunity to work and live in Australia permanently.

The application process is similar to the process for a 457 visa in that the employer must apply for approval from DIAC to sponsor the foreign national employee for permanent residence and the employee must demonstrate they are suitably qualified and experienced for the position.

There are some crucial differences between the ENS visa and the 457 visa including that the applicant for an ENS visa must be under the age of 45 (unless they hold a very senior or specialized position) and the sponsor must be an Australian business.

Unlike the 457 visa, employers are not required to give undertakings to the Government in respect of the holder of an ENS visa. In addition, once the ENS visa is granted it ceases to be connected to the visa holder’s employment.

Other Comments

The Australian government has introduced legislation which makes it an offence for an employer to knowingly or recklessly allow a foreign national to work without a valid visa or in breach of their visa conditions.

These sanctions also apply to employers who refer foreign nationals for work (and the employer knows, or is reckless as to whether the foreign national has a valid visa or will be breaching their visa conditions).

For example, an offence may occur if a foreign national is allowed to work after their visa has expired; or a foreign national is allowed to work even though their visa prohibits work.

An offence would similarly occur if a recruitment agency refers a foreign national employee whose visa has expired to work for an end user client; or refers a foreign national for full-time work even though their visa conditions only permit part-time work.

These laws place an unprecedented obligation on employers to verify the work rights of their employees. The consequences of breaching these laws are severe as employers now risk criminal prosecution, financial penalty and, in some cases, imprisonment.

If an employee is being exploited and the employer knows of (or is reckless as to) this circumstance, the sanctions are more severe. Exploitation is defined as being a condition of forced labor, sexual servitude or slavery.

A foreign national's immigration status should, therefore, always be checked prior to an offer of employment being issued and/or prior to employment commencing.

Failure to comply with these requirements may result in the following penalties:

Offence	Penalties	
	Individual offender	Corporation offender
Foreign national allowed or referred for work	AUD13,200 or up to 2 years imprisonment	AUD66,000 per offence
Foreign national allowed or referred for work where exploitation occurs	AUD33,000 or up to 5 years imprisonment	AUD165,000 per offence

In addition to the visas discussed above, there are a broad range of temporary visas that allow restricted work. From time to time these visas may be more appropriate for a foreign national employee if, for instance, sponsorship through a 457 visa is not possible or practical.

Working Holiday visas are available to nationals of certain countries (*e.g.*, United Kingdom, Germany and Canada) and permit the holder to work for up to six months with any one employer while also holidaying in Australia. Applicants must be between the age of 18 and 31 and extensions of this 12 month visa are available in prescribed circumstances.

Foreign nationals on student visas are also permitted to work for up to 20 hours per week and full-time when their course is not in session. Often these visas may be more appropriate for short-term assignments or casual, less qualified workers.

In addition to temporary visas, Australian permanent residence is also available to foreign nationals who wish to apply independently (*i.e.*, without the sponsorship of an Australian employer) on the basis of their skills and experience. Applicants must meet the relevant pass mark in a points based system which allocates points for such factors as age, English language ability, work experience and occupation. In general, the younger and more qualified and/or experienced the applicant, the greater the chance of achieving the relevant pass mark. Changes to the economic climate have resulted in slower processing of these applications unless the applicant's nominated occupation appears on DIAC's 'Skilled Occupation List'.

The family migration program facilitates the movement of spouses, children and other family members of Australian citizens and Australia permanent residents to Australia. This program ultimately provides applicants with Australian permanent residence and unrestricted work rights.

It is important to note that foreign nationals holding permanent residence visas are required to continue to meet specific residence requirements in order to maintain their immigration status. Lengthy periods of residence overseas may jeopardize a permanent resident's ability to re-enter Australia. It is for this reason that Australian Citizenship is recommended for most foreign nationals once they are able to meet the requirements.

Applicants for Australian Citizenship are eligible if they can demonstrate that they have been living in Australia on a valid visa for four years immediately before applying, including one year as a permanent resident, and have not have been absent from Australia for more than one year in total during the 4 year period, including no more than 90 days in the year before applying.

In addition to the residence requirements, all applicants must pass the *Citizenship Test* aimed at ensuring that applicants comprehend their rights and obligations as an Australian citizen.

Further Information

CCH Australia publishes the ***Australian Master Human Resources Guide*** (online and in print) and the ***Australian Human Resources Management*** subscription information service (online and in print). Both publications contain commentary authored by Baker & McKenzie and provide more information on the Australian immigration process, various visa categories, employer obligations, employer sanctions, and Australian citizenship.

Austria

Executive Summary

Austrian law provides at the moment for several kinds of visas and temporary or permanent residence permits. Usually visas are less significant for doing business or employment than Austrian temporary residence permits. Residence permits are usually bound to quotas and are difficult to obtain.

Key Government Agencies

The Austrian Foreign Ministry's ("Außenministerium") embassies and consulates abroad accept applications for visas and permits and have ultimate responsibility for visa issuance.

The Austrian Public Employment Service ("Arbeitsmarktservice Österreich" or AMS) operates through local offices in Austria that have jurisdiction over work permit requests for foreign nationals.

Residence permits are handled by a number of governmental entities. The Governor of a federal province ("Landeshauptmann") is competent for all residence entitlements and documentation thereof. In Vienna, the magistrate ("Magistrat") is competent. The Federal Minister of the Interior is the authority for appeals and for certifications of educational and research institutions. The district administration authority ("Bezirksverwaltungsbehörde") handles the prosecutions. The regional competent agency is the one where the foreigner has the place of residence or planned place of residence. In case of an unknown place of residence or terminated residence, the responsible authority is that which issued the last residence permit or which would now be functionally competent.

Current Trends

On January 1, 2006, a new Foreigner's Act ("Fremdenrechtspaket 2005") entered into force. Changes became necessary due to certain political intentions of the Austrian Government and in order to implement an EC-Directive relating to family-reunion. Therefore, the Austrian legislature enacted two new, independent laws, the Foreign Police Act ("Fremdenpolizeigesetz 2005 FPG"), dealing mostly with asylum and visa matters up to six months, and the Residence Act ("Niederlassungs- und Aufenthaltsgesetz NAG"). The latter is of utmost importance for any foreign company wishing to post employees to Austria for more than six months.

Since September 1, 2009, there are new legal provisions in force which facilitate active partners of a partnership or corporation from a Member State the access to the Austrian labor market.

Business Travel

Travel Visa C

The most common visa or entry permit for tourists and "business" visitors is the Visa C ("Schengen-Visa"), which allows traveling within the European Union (EU) and staying up to 90 days within a period of 180 days in Austria. This visa does not permit employment.

Visitor Visa D

Visitor Visa D is available for visitors coming for more than 90 and up to 180 days as either a tourist or on business. Like the Visa C, the Visa D does not authorize employment in Austria.

Visitor-Travel Visa C+D

Since 2006, the Visa C+D has been available for temporary work under specific circumstances on short-term employment for up to 3 months within a period of half a year and, furthermore, it authorizes residence within the Member State that issued the Visa for more than 3 months. Due to a change in law, since April 5, 2010, no further Visa C+D will be issued. Already issued Visas, however, remain effective.

Visa Waiver

Visitors from certain countries do not need an entry permit (visa) to stay in Austria as either tourists or on a business trip for a period of up to 90 days. Such visitors are not allowed to take up local employment.

The following countries currently do not need a visa: Andorra, Argentina, Australia, Antigua and Barbuda, Barbados, Bahamas, Belgium, Brazil, Brunei, Bulgaria, Canada, Chile, Croatia, Costa Rica, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, EU, Finland, France, Germany, Great Britain and Northern Ireland, Greece, Guatemala, Honduras, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Macau, Macedonia, Malaysia, Malta, Mauritius, Mexico, Monaco, Montenegro, The Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Korea, Romania, San Marino, Serbia, Seychelles, Sweden, Switzerland, Singapore, Slovakia, Slovenia, Spain, St. Kitts and Nevis, United States of America, Uruguay, Venezuela.

However, citizens from Macedonia, Montenegro and Serbia must hold a biometric passport in order to be waived from the visa requirement.

Training

Employees sent to Austria for training purposes have to obtain either a Visa C or a Visa D (which is seldom issued) or a temporary residence permit as “special cases” as described below. Please note that according to the Austrian Foreign Employment Act (“Ausländerbeschäftigungsgesetz AuslBG”), further requirements have to be met. Voluntary services, a professional or holiday traineeship or a joint venture need to be registered with the AMS at least two weeks before the beginning of the employment period by the trainer.

Employment Assignments

Temporary Residence Permit (“Aufenthaltsbewilligung”)

Foreign nationals coming for a period exceeding six months must apply for a temporary residence permit. Temporary residence permits are issued by the authorities in Austria and are solely issued for stays exceeding six months.

All temporary residence permits share a number of common requirements. Applications must be submitted in person and require a passport valid at least three months beyond date of travel. Applicants must have proof of sufficient funds (solitary person/partnership; € 783,99/€ 1.175,45 as monthly net income), accommodations, and health insurance.

Applications for a residence permit are filed with the Austrian Embassy or Consulate General before departure for Austria. In general, travel to Austria is not permitted until the application is approved. It is not permissible to simultaneously file several applications or applications with differing purposes for residence.

The residence permit, once issued, is to be picked up at the issuing authority in Austria. Further, almost all foreigners who both apply for

a residence permit and plan to stay in Austria for more than 12 months within a period of 24 months must sign an Integration Agreement (which proves that they have sufficient knowledge of the German language).

The types of Temporary Residence Permits most commonly used by multinational companies on global mobility assignments are:

Employee Sent on Temporary Duty (“Betriebsentsandter”)

This is for foreign nationals sent by their company as a delegate. A work permit is usually required. There is no visa for family members.

Rotational employee - company representative/manager/executive (“Rotationsarbeitskraft”)

This is for foreigners sent by multinational companies to work in Austria, but can be sent to different places as the company decides. A work permit is required. There are visa benefits for family members.

Self-employment (“Selbstständiger”)

This is for foreign nationals coming to fulfill a contract for a specific job.

The duration must be longer than six months. There is no visa for family members.

Researcher (“Forscher”)

This is used for researchers at certified research institutes only and has specific contract requirements. There are visa benefits for family members.

Student (“Studierender”)

This is for students at a university. If it is a private university, it has to be accredited. For an extension of this permit it is important to prove the success with his studies. He can bring his family and has to proof sufficient funds (2010: at least € 432.97 as monthly net income until the student has reached the age of 24). Furthermore there are different possibilities of working on a temporary work permit (“Beschäftigungsbewilligung”) within limited salary levels.

Foreign Placement Permits and Work Permits

Whereas working in Austria as an employee is limited as described above, providing services in general is not, although restrictions might apply due to trade law. That means that companies may perform “projects” in Austria. In any case, a foreign placement permit (“Entsendebewilligung”) issued by the local AMS office has to be obtained by the contracting party ordering the “project.”

Two conditions have to be met. First, the “project” cannot exceed six months and, second, the employee must not work in Austria more than four months during the whole project duration. If these conditions are not met, a work permit (“Beschäftigungsbewilligung”) is required.

It is important to emphasize that the work permit requirement cannot be avoided by claiming a chain of four month “projects” to attempt continuous use of the foreign placement permit. Austrian courts would consider this an inadmissible circumvention of mandatory provisions.

Foreign employees from third countries (including the new EU member states) working for a company that is situated in the EU are required to register with the AMS (“EU-Entsendebestätigung”), if they are assigned to a company with its seat in Austria.

Concerning salary, Austrian law stipulates that if an applicable collective bargaining agreement (CBA) for the business of the sending company exists in Austria, salary has to be at least the minimum salary as stipulated by the CBA. If no applicable CBA exists, the average salary of a comparable peer group of Austrian employees has to be taken into account.

Non-EU citizens may generally only be employed in Austria if the employer has either obtained a work permit (“Beschäftigungsbewilligung”) or the employee has been granted a certificate of dispensation (“Befreiungsschein”). In case of violation of those prerequisites, the district administration authority (“Bezirksverwaltungsbehörde”) may levy fines upon the employer.

There are special work permits for seasonal workers, specialists, nursing staff and university students to obtain.

Work permits may be issued if there are no other important public or economic reasons to preclude employment of a foreigner. Public reasons include the possibility to fill the job which the foreigner applied for by using an Austrian employee. Thus, no equally qualified and currently unemployed Austrian citizen should be registered with the AMS when requesting a work permit.

Other Comments

Settlement Permit (“Niederlassungsbewilligung”)

Non-EU/EEA citizens can immigrate to Austria upon receipt of a settlement permit.

Key Employees and Top Managers

For key employees (“Schlüsselkräfte”) obtaining a work permit is easier. An employee might qualify as a key employee if he is

specially educated (*i.e.*, university or other specific degrees) and receives salary in a certain amount (2010: at least € 2,466 gross monthly). Further criteria have to be met. A residence permit for a key employee may now be issued for up to 18 months and may be extended for several reasons. The residence permit allows the key employee to bring his spouse and children, based on the key employee - permit. Obtaining a key employee-permit is usually linked to the quota limits on the amount of permits issued per year. The employer must have a registered office in Austria.

Family members of employees already lawfully working in Austria who are not EU citizens may only acquire an Austrian residence permit derived from their relatives, if their relative's residence permit is of an unlimited nature. If a residence (and work) permit has only been issued for a limited period of time, relatives wishing to join the employees in Austria have to file a separate visa request and are usually only admissible from outside of Austria.

Top Managers, their spouse and children, as well as their support and household staff, are exempt from the Austrian Foreign Employment Act. This category consists of executives of the board or management level of companies, as well as international renowned scientists who receive a salary in a certain amount (2010: at least € 4,932 gross monthly). Support and household staff consists of secretaries, assistants, *etc.*, as long as they are employed by the executive.

Key employees as well as Top Managers and their family members do not have to proof the integration criteria as prescribed in the Integration Agreement. Apart from these restrictions there are no comparable quota limits in force for Top Managers.

Assignment and Employment within a Corporate Group (Lease of Employees)

Non-EEA employers may generally send their employees to Austria in order to work under the direction of an Austrian company only if the local trade authority (“Gewerbebehörde”) approves the lease of employees and confirms that:

- these employees are significantly well-qualified for the proposed tasks (*i.e.*, the employee has already held a specific position for a long period of time and therefore is “significantly well-qualified”) and the assignment of such employees is required due to labor market and economical reasons.
- employment is only possible by sending employees from foreign countries (*e.g.*, no equally qualified Austrian employees would be available on the Austrian labor market); and
- employment of those employees does not jeopardize payment and working conditions of comparable Austrian employees.

Austrian law stipulates that the employees are entitled to adequate payment and working conditions. Likewise, the assigned employees will be entitled to the same minimum wages provided by the CBA to comparable Austrian workers. “Wage” also includes supplementary grants and other benefits, but in general not compensation for expenses.

Applications for the assignment of employees undergo strict scrutiny of the Austrian authorities and permits are seldom issued. However, the lease of employees in the European Economic Area does not require the prior permission of Austrian authorities. But, in such case, the notification of the assignment to the local trade authority is required.

Furthermore, Austrian law contains an important exception concerning corporate groups. The normal requirements do not have to be met if employees are leased within a corporate group, when both, the assigning and the receiving company have their seat in the European Economic Area (EEA). Thus, no special permit by the authorities is required. However, employees who have been sent from one corporation group member to another within the EEA are entitled to adequate payment according to applicable CBAs and further provisions of mandatory Austrian Law regarding vacation and working time apply to them.

Additionally, any lease of employees requires the agreement of the affected employee to being sent to another company or corporate group member in advance, even if employment is only planned for a short-term-period.

Citizens from the European Economic Area

Citizens of the EEA and Switzerland may be employed in Austria easily. They do not need any special residence or work permit, however, the general regulations on notifying the Austrian authorities of their address in Austria still applies.

Employment of employees from some new Member States is possible under certain circumstances in Austria. During a specific transitional period, generally all citizens from the new Member States (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia) need a work permit (“Beschäftigungsbewilligung”), if they want to work in Austria and possess a freedom of movement certificate. A work permit is usually difficult to obtain, particularly regarding mandatory consent by the responsible AMS office. The AMS is obliged to refuse its consent if Austrian employees would be equally suitable to work in the proposed position.

EU/EEA citizens making use of their right to free movement and their family members have to register their permanent residence with the authorities within three months if they intend to reside in Austria for more than three months. EU/EEA citizens may permanently settle in Austria if they are employed or self-employed in Austria or earn a secure living and have sufficient health insurance coverage.

Residence status or a quota-free “settlement permit for family members” (“Niederlassungsbewilligung Angehöriger”) may also be available to family members of EU/EEA citizens under certain circumstances.

Furthermore, a residence permit may apply to third countries citizens who are family members of Austrians or EU/EEA citizens as far as certain requirements are met. Such family members are, furthermore, only entitled to free movement within the EU if further prerequisites are met.

Republic of Azerbaijan

Executive Summary

Based on the statutory requirements alone, Azerbaijan could be described as a country with “open” migration laws as the laws are relatively simple and easy to follow. At the same time, practical implementation of these laws is not always straightforward and consistent. Some employers in strategic market sectors (*e.g.*, oil and gas) will often dispense with special work permit requirements when hiring foreigners, while others (*e.g.*, employment agencies hiring foreign labor) may find it difficult to comply with all legal requirements. That said, with good planning and legal support, employers should be able to comply with all legal requirements.

Key Government Agencies

Visa processing is handled by the Consular Department of the Ministry of Foreign Affairs of Azerbaijan, as well as Azerbaijani embassies and consulates abroad.

The recently created State Migration Service is charged with implementing state policy in the regulation of labor migration. Pursuant to the Presidential Decree *On the Application of the “One-Stop Shop” Principle in the Management of the Migration Process*, dated July 1, 2009, the State Migration Service issues temporary and permanent residence permits, receives work permit applications for forwarding to the Ministry of Labor and Social Protection of the Population (the “Labor Ministry”), and grants and registers the extension of foreigners’ stays.

The Cabinet of Ministers sets annual quotas on the maximum number of foreigners allowed to obtain a work permit in any given year. Other state agencies involved in the regulation of labor migration

include the State Customs Committee and the State Border Service, which register and control entry into and exit from the country.

Current Trends

Most foreigners working in Azerbaijan are involved, one way or another, in oil and gas operations. Given the tendency of “hidden” or “creeping” expropriation in some oil-rich countries, there have been suggestions that Azerbaijan might increase its control over foreign labor. Specifically, with respect to labor migration, the establishment of the State Migration Service in 2007 is believed to be driven by the State’s desire to regulate the foreign workforce more effectively. Shortly after the establishment of the State Migration Service, the regulations on the issuance of work permits to foreign workers were amended to require the State Migration Service’s affirmative opinion as an additional requirement for issuing a work permit.

The state agencies managing the migration process have some overlapping responsibilities. For instance, the Ministry of Interior Affairs still issues temporary registration permits (“pink cards”) which are deemed substituted by temporary or permanent residence permits issued by the State Migration Service. The Ministry of Interior Affairs is continuing to issue “pink cards” in the absence of a law explicitly abolishing the requirement.

In general, despite global trends, Azerbaijan remains a relatively “open” country with a reasonably liberal investment and migration regimes.

Business Travel

A foreign national wishing to enter Azerbaijan must have a personal passport and an official permit (visa). Additionally, all foreigners visiting Azerbaijan for a period of more than 30 days must register

their passports with the local passport registration authorities at the Ministry of Internal Affairs.

Azerbaijani law specifies four types of visa for foreign nationals: entry visas; transit visas; return visas; and exit visas.

Entry Visa

Entry visas grant general entrance into Azerbaijan. There are two types of entry visa: single entry visas; and multiple entry visas.

Single entry visas are issued for periods of three days to three months, permitting a foreign visitor to enter Azerbaijan only once. This visa is usually granted to foreign nationals who come to Azerbaijan for tourism, non recurring business trips or other short-term visits.

Multiple entry visas are issued for periods of one to two years. Foreign nationals working in diplomatic missions, representative offices or consulates of foreign countries or in representative offices of international organizations in Azerbaijan or coming to Azerbaijan to study may obtain multiple entry visas. The family members of foreign nationals receiving multiple entry visas may also receive visas.

Short stay single entry visas (up to 30 days) may be obtained upon arrival from the Visa Section of the Consular Department at the Heydar Aliyev International Airport in Baku.

Single entry visas for tourist purposes require a confirmation, invitation or tourist voucher from the receiving tourist organization or a hotel in Azerbaijan.

Single or multiple entry visas for business, education and employment purposes require an invitation from the receiving party in Azerbaijan sent through the Consular Department. If the invitation from a receiving party is not sent through the Consular Department, the

traveler may submit an invitation received by fax directly from the receiving party in Azerbaijan or an employer request letter.

Entry visas become ineffective if not used during their stated duration.

A foreign national entering Azerbaijan without a visa pursuant to a bilateral agreement with Azerbaijan must obtain an entry visa if the duration of the stay will exceed ninety days.

Transit Visas

Single or multiple transit visas are issued to foreign nationals who travel to other countries through Azerbaijan. The holder of a transit visa is allowed to stay in Azerbaijan for up to five days unless there is a notation on the visa prohibiting such a stay. Some international agreements concluded with Azerbaijan allow transit through Azerbaijan without a transit visa.

Transit visas may also be obtained upon arrival from the Visa Section of the Consular Department at the Heydar Aliyev International Airport in Baku.

Return Visas

Return visas are issued at request of a visitor who visited Azerbaijan on a single entry visa, but left before the visa's expiration. A return visa allows the holder to return to Azerbaijan. A return visa expires if not used within six months of issuance.

Exit Visa

Exit visas are issued to foreign nationals who are permanent residents in Azerbaijan and who wish to leave Azerbaijan.

Visa Issuance Period

Applications of foreign nationals seeking visas with a term of more than thirty days are considered within a month of submission to an Azerbaijani embassy or consulate abroad or directly to the Consular Department. If a foreign national's visit is for urgent medical treatment, serious illness or the death of relative, upon submission of documents confirming this, the visa application is considered within 48 hours.

Visa Waiver

The normal visa requirement is waived for nationals of CIS countries (excluding Armenia [Azerbaijan is technically still in a state of war with Armenia over the Norgono-Karabakh region; therefore, as a practical matter, Armenian citizens may not enter Azerbaijan without special permission] and Turkmenistan), Turkey, Georgia and Bulgaria. Holders of diplomatic and service passports from Hungary, Cuba, Argentina, South Korea, Morocco, Jordan, Mexico and Indonesia may also enter and leave Azerbaijan without a visa.

A foreign national entering Azerbaijan without a visa pursuant to a bilateral agreement with Azerbaijan must obtain an entry visa if the duration of the stay will exceed 90 days.

Temporary Residence

Temporary residence allows foreign citizens to live in Azerbaijan for up to five years on a "temporary" basis. A temporary residence permit is issued by the State Migration Service if the foreigner:

- is a close relative of or married to an Azerbaijani citizen;
- has obtained an individual work permit;

- has enrolled in an Azerbaijani institution of higher education on a full-time basis;
- has invested AZN 500,000 in the Azerbaijani economy;
- maintains AZN 50,000 in an Azerbaijani bank account (As of September 01, 2010, USD 1= AZN 0.8036.); and
- is a “highly-skilled” professional.

Azerbaijani law does not set any definitive criteria as to the qualification of a foreigner as a highly-skilled professional and such qualification is believed to be determined by the State Migration Service on a discretionary basis.

As of the date of publication, the State Migration Service now issues temporary residence permits to only those sole proprietors who maintain AZN 50,000 in an Azerbaijani bank account. The law does not specify whether this amount must be “frozen” for the period of the foreigner’s stay in Azerbaijan or whether the type of account.

Employment Assignments

A foreigner coming to Azerbaijan to work may be required to obtain an individual work permit before starting work.

Eligibility requirements

Work permits are issued by the Labor Ministry, subject to the affirmative opinion of the State Migration Service. By law, a work permit may only be issued if:

- i. the foreign worker is at least 18 years of age at the time of application (in contrast, Azerbaijani citizens under 18 may, in certain circumstances, be employed on a permanent basis);

- ii. no Azerbaijani citizen with adequate professional training is available to fill the job vacancy; and
- iii. state employment agencies are not able or have failed to propose a suitable local candidate to fill the vacancy.

The employer's application should address each of these points. See below for further details on the application process. Only Azerbaijani employers (*i.e.*, Azerbaijani legal entities and sole entrepreneurs, as well as Azerbaijani branches and representative offices of foreign legal entities) are entitled to obtain work permits for their expatriate employees.

Duration

A work permit may be issued for up to one year (most are issued for one year) and may be extended up to four times. Therefore, the cumulative maximum duration of a single work permit is five consecutive years. Extension beyond this term (a repeat work permit) is possible if the foreign employee spends a year outside Azerbaijan after expiration of the cumulative term of the initial work permit or after his/her last employment in Azerbaijan.

As the Labor Ministry determines whether to issue or extend a work permit at its own discretion (within the parameters of the law), the term of the employment agreement with a foreign employee must correspond with the term of the work permit. If the employment agreement is terminated earlier than the originally anticipated termination date, the employing company must inform the Labor Ministry within 5 days. In any case, a work permit will be deemed expired upon termination of the employment agreement.

Transfer to New Job

An employing company may not transfer a foreigner to work on another job within the same company unless a new work permit is obtained for that new job. Similarly, a foreigner may not use his/her work permit to work for a new company unless a new work permit is obtained for that new company.

Exceptions

The following groups of foreign nationals working in Azerbaijan are exempt from the work permit requirement:

Sole proprietors

Foreigners registered as “individual entrepreneurs” (sole proprietors) are exempt from the work permit requirement. A sole proprietorship is defined as independent activity by a physical (natural) person for the primary purpose of deriving profit without establishing a legal entity. A sole proprietor must register with the tax authorities and obtain a tax identification number before engaging in business activities.

Managerial staff

A work permit is not required for the directors and deputy directors of foreign legal entities, their branches or representative offices in Azerbaijan. If, however, a foreign company establishes a subsidiary in Azerbaijan, its foreign directors (managers) and deputy directors will be required to obtain a work permit.

Short term secondees

A foreigner seconded to Azerbaijan for a period of less than three months (90 cumulative days per calendar year as interpreted by the

Ministry of Labor) is also exempt from the work permit requirement. By definition, a secondment suggests that a foreigner has a permanent place of employment outside Azerbaijan. Therefore, it appears that the secondment exemption does not apply unless the foreigner is a genuine secondee.

Mass media workers

Employees of foreign media agencies accredited (seconded) to Azerbaijan are not required to obtain a work permit.

Education specialists

Foreign part time or full time professors engaged by local schools and universities, as well as other scholars involved in scientific research are exempt from the work permit requirement.

Diplomats and international civil servants

Foreigners engaged by their governments in diplomatic or consular services as well as the employees of international organizations such as the United Nations are not required to obtain a work permit.

Others

Other foreigners not required to obtain a work permit include foreigners permanently residing in Azerbaijan, foreigners employed by certain government authorities (*e.g.*, Office of the President, Cabinet of Ministers and Ministry of Defense), foreigners engaged in religious activity as members of registered religious organizations, merchant marines, sportsmen, and artisans and craftsmen.

Belgium

Executive Summary

Nationals from the European Economic Area or “EEA” (the European Union Member States, plus Iceland, Norway and Liechtenstein) do not require a work permit to be employed in Belgium. EEA nationals are, however, required to obtain a residence permit if the stay in Belgium is longer than three months. Since May 1, 2009, nationals of the new EU Member States (Poland, Hungary, Czech Republic, Slovakia, Estonia, Latvia, Lithuania and Slovenia) no longer need a work permit for Belgium. Citizens of Malta and Cyprus were already exempt. The transition measures, however, remain in effect for citizens of Bulgaria and Romania, who still require a work permit (whether or not through the specific process for “bottle-neck professions”), at least until December 31, 2011.

Non-EEA nationals as a rule must obtain a work permit and a residence permit in order to work and reside in Belgium. The majority of the type B work permits issued to non-EEA nationals relate to highly qualified employees and executives who need not comply with the labor market criterion.

Upon receipt of the work permit, the employee will in most cases (depending on the nationality) need to obtain a work visa (*i.e.*, authorization to stay in Belgium for more than three months) at the Belgian consulate or embassy abroad with jurisdiction for the latest place of legal residence. The visa and the work permit must be obtained prior to the start of the employment.

Within three days after arrival in Belgium, the foreign employee must register with the local commune with jurisdiction for the intended place of residence in order to obtain a residence permit, which is valid for the same duration as the work permit. The work permit is valid only when combined with a residence permit. Working in Belgium

while in possession of a work permit, but without a valid residence permit, is considered a serious offence, subject to penalties of up to € 75,000.

Key Government Agencies

Consular posts abroad are part of the Federal Public Service (“FPS”) Foreign Affairs, Foreign Trade and development cooperation agency is responsible for visa applications outside Belgium.

The FPS Foreign Affairs, Department of Federal Immigration is the competent authority for issuing Belgian residence permits. As a rule, upon obtaining a Belgian work permit and work visa, a residence permit will be valid for the duration of the work permit.

As of May 1, 2009, any work permit applications – in all 3 regions – must be submitted directly to the regional immigration ministries, which are the competent government offices for issuing Belgian work permits. The federal state of Belgium indeed consists of three regions: the Brussels Capital region, the Flemish region in the North, and the Walloon region in the South.

Current Trends

As part of the efforts to attract foreign highly qualified workers, the European Union has accepted the idea of an EU work permit, the so-called “Blue Card” that allows employment of non-Europeans in any country within the EU. The “Blue Card” scheme is inspired by the U.S. “Green Card” program and aims to attract top talent to the EU to combat the aging population and declining birth rate.

The EU Member States must implement the so-called Blue Card Directive¹ into national law before June, 19 2011. The Blue Card allows highly-qualified non-EEA nationals to work and reside on the territory of the Member State issuing the Blue Card. After an initial 18 months' period in such Member State, the employee may move to another Member State in order to perform highly-qualified work.

In line with this European trend, Belgium - which has for many years facilitated the access of non-European highly qualified employees into its labor market - introduced work permit exemptions for researchers, executives working at European Headquarters in Belgium, and short-term employee training assignments. Further, the Belgian government adopted the "Limosa" project, which aims to create one electronic platform for easy application of various permits.

The EU Directive EG/810/2009 regarding the European Visa Code entered into effect on April 5, 2010. This European Visa Code constitutes a major step towards a common visa policy and to reinforce the cooperation within the Schengen area. The Visa Code sets out harmonized procedures and conditions for issuing short stay visas and airport transit visas. Legislation in relation to the issuance of visas for long stay (beyond 90 days) remains of national competence. However, pursuant to the Visa Code, third country nationals who hold a long stay (type D) visa can now freely travel within the Schengen area for up to 90 days over a six month period.

¹ EU Directive 2009/50/EG of 25 May 2009 regarding the conditions for the access and residence of third country nationals for highly-qualified employment

Business Travel

Schengen Visa

The short stay or Schengen visa is valid for the territory of all the Schengen States and permits short trips for up to 90 days over a six month period.

The new European Visa Code enhances the harmonization of procedures for short stay visa and transit visa within the Schengen area and facilitates the application procedure. Apart from a uniform application form, the Visa Code inter alia introduces a maximum deadline of 15 days (extendable to 30 days and maximum 60 days in exceptional circumstances) within which the consular posts must decide on the visa application.

Work permit exemption

Foreign employees coming to Belgium on short-term business trips are exempted from obtaining a work permit, subject to certain conditions. No work permit is required if the employee's activities are restricted to attending so-called business "meetings in a closed circle" and/or attending scientific seminars, provided the stay in Belgium does not exceed five days per month. The concept of "meetings in a closed circle" is interpreted restrictively and refers to a wide range of meetings, including discussions on strategy, contract negotiations with a customer, evaluation interviews, training course, etc. It is forbidden to perform any productive work activity in Belgium under this status.

Foreign sales representatives having their principal residence abroad who travel to Belgium to meet with customers in Belgium on behalf of foreign companies, which do not have a branch or legal entity in Belgium, also do not require a work permit, provided their stay in Belgium does not exceed three subsequent months.

Self-employed individuals coming to Belgium for business purposes (*i.e.*, in order to visit professional partners, develop professional contacts, attend trade fairs, negotiate and/or conclude contracts or attend board of directors' meetings) do not require a professional card provided their stay does not exceed three subsequent months.

Visa Waiver

Of course, citizens of EU/EEA countries do not need a visa when traveling to Belgium.

In addition, citizens of certain privileged countries do not need a visa when traveling to Belgium for short-term business purposes. They will be allowed to enter Belgium on the basis of their nationality and upon presentation of their international passport. The length of stay is up to 90 days only.

Although no visa is required, if subject to a border control, the individual will need to be able to prove the purpose of the trip and demonstrate sufficient means of subsistence (this is, of course, not applicable to EU citizens). On entering Belgium, one may be asked for one or more of the following documents: proof of hotel reservation, departure ticket or proof of adequate means of subsistence such as cash or credit cards accepted in Belgium or an original copy of a pledge of financial support. The business traveler must also report to the local commune of residence after arrival.

Training

Employee Training Assignments Not Exceeding 3 Months

Recent legislative changes facilitate training assignments. Foreign employees who come to Belgium to follow a training not exceeding three subsequent calendar months at the Belgian seat of the multi-national group to which their employer belongs, in the framework of a

training agreement between the respective companies of the multinational group, are exempted from the work permit requirement. The company organizing the training is, however, required to inform the local immigration authorities about the employee's stay in Belgium at the latest at the start of the training.

This specific work permit exemption is limited to three categories of employees:

- Employees who are employed with an associated company located within the EEA, irrespective of their citizenship;
- Employees who are employed with an associated company located outside the EEA and who are citizens of an OESO member state; and
- Employees who are citizens of countries with which Belgium has entered into a bilateral employment agreement (*e.g.*, Switzerland, Croatia, Bosnia-Herzegovina, Serbia and Montenegro, Macedonia, Morocco, Tunis, and Turkey).

The authorized scope of training is restrictive and may not result in any significant productive work. The exemption does not apply if the training is exclusively or primarily “on-the-job.”

Other Employee Training Assignments

Employees employed in a foreign company belonging to an international group that has a seat in Belgium and who cannot call upon the work permit exemption are eligible to obtain a type B work permit allowing them to follow training at the Belgian seat, regardless of their regular place of employment abroad and irrespective of nationality. Such training may not include any productive work or be an “on-the-job” type of training. The duration of such training is not limited.

Specific Work Permit For Trainees/Interns

There is also a specific work permit designed for the trainee or intern who, immediately after receiving a diploma or degree, wishes to undergo practical training with an employer as a continuation of the education.

In addition to the general requirements to obtain a work permit, the application for a specific trainee work permit requires the following:

- the trainee must be between 18 and 30 years old;
- the training needs to be full-time;
- the training may not exceed 12 months;
- a training agreement needs to be signed and translated in the mother tongue of the employee-trainee (or a language which the trainee understands) and needs to indicate the number of hours of training and the salary which cannot be lower than the legal minimum of the applicable business sector; and
- a training program needs to be presented together with a legalized copy of the diploma or degree.

Employment Assignments

As a general rule, a work permit and a residence permit is required for all employment assignments in Belgium and must be obtained prior to the start of the employment.

Work Permit Exemptions

Some employees are, however, exempt from obtaining a work permit. The most relevant categories are:

Citizens From The European Economic Area

EEA nationals coming to work in Belgium are exempt from obtaining a work permit. This also applies to their spouse and children under the age of 21, even if they are not themselves EEA nationals. Such family members are required to obtain a “family reunion visa” to accompany or join the EEA national coming to work in Belgium.

The following 18 countries belong originally to the EEA: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Iceland, Norway and Liechtenstein. Although Switzerland does not form part of the EEA, Swiss nationals are also allowed to freely reside and work in Belgium without any prior formalities.

EEA nationals and their family members are free to be employed by a company or to work in a self-employed status without work authorization. If, however, an EEA national plans to stay in Belgium for longer than three months, then the individual must apply for a residence permit for EEA nationals with the local municipality responsible for the place of residence. The local municipality will issue a residence permit which will be valid for five years and may be renewed automatically.

New EU Member States

Since May 1, 2009, nationals of the 8 new EU Member States (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) who seek to enter the Belgian labor market to undertake paid employment no longer require a work permit. Citizens of Cyprus and Malta already enjoyed free access. The Belgian government decided to extend the “stand-still” regime for Bulgarian and Romanian nationals, who still need to obtain a work permit to enter the Belgian labor market at least until December 31, 2011.

Bulgarian and Romanian citizens can, however, benefit from a specific procedure in some cases (*i.e.*, the labor market criterion is not taken into account for such nationals to the extent that their work permit application is related to professions for which the competent regional government has recognized that there is a shortage of available workers on the labor market - the so-called “bottle-neck professions”). The three regional governments in Belgium (*i.e.*, Flanders, Brussels, Walloon region) have issued separate lists of “bottle-neck professions.”

The free movement of services applies with immediate effect *vis-à-vis* all new Member States.

Indeed, Belgian law stipulates that the non-exemption of the prior work permit requirement for some citizens of the new Member States do not apply to workers employed by a company located in a EU Member State that perform services on Belgian soil, provided that:

- Such workers are legally employed in their residence Member State; and
- Such work authorization is valid for at least the period of the services to be performed in Belgium.

In practice, this rule means that Bulgarian and Romania citizens do not require any work permit or authorization, if legally employed by an employer located in such Member State and coming to Belgium for that employer to perform services in Belgium.

European Headquarter

Executive employees working under a local employment contract of a European Headquarter in Belgium are exempt from obtaining a work permit. This exemption has recently been introduced to compensate for the fact that the former coordination center status no longer exists.

Indeed, the European Commission ruled that coordination centers should disappear as coordination centers would benefit from unfair tax advantages and therefore would be incompatible with European state aid rules.

The exemption does not apply to foreign employees who are temporarily seconded to a Headquarter in Belgium from abroad and remain employed by their foreign employer. Such executives still need a work permit.

“European Headquarter” is defined as a Belgian company or subsidiary of a foreign company, provided that such company can be qualified as an associated company and performs activities of a preparatory or supporting nature on behalf of the companies of the group to which it belongs, activities in relation to provision of information to clients, and activities which passively contribute to sales transactions and/or activities which imply an active intervention in the sales.

“Executive” is defined as a manager holding a high-level function that requires a certain level of education or equivalent professional experience and whose annual remuneration exceeds € 59,460 for 2009 (indexed annually). However, the recent exemption unintentionally created a new category of employees needing a work permit, as the top two management layers were still required to obtain a work permit. As of May 29, 2009, this legislative inconsistency was corrected so that as of that date an exemption from work permits is available for all managerial personnel, including the top two lawyers, employed by Belgian-based Headquarters.

Although no formal work permit is required, the Belgian Headquarter must inform the immigration authorities, at the latest at the start of the employment, that the executive will commence employment in Belgium, and a certificate from a recognized auditor confirming that

the company qualifies as a “European Headquarter” must be submitted.

Belgian “van der Elst Visa”

No work permit is required for individuals eligible for the so-called “van der Elst visa.” A non-EEA employee regularly working for a company in one Member State A does not need to obtain an additional work permit if this employee is transferred to another Member State B.

To qualify, the employee must be working on a temporarily based project (*i.e.*, on a contractual basis) for the supply of services by its employer established in Member State A to a company established in Member State B.

Belgian law exempts such foreign nationals from the requirement to obtain a Belgian work permit provided that they:

- are entitled to residence, or have a valid residence permit, for a period of more than three months in the Member State of the EEA where they have established residence;
- are lawfully employed in the Member State where they have established residence and hold a permit which is at least valid during the period of the services to be carried out in Belgium;
- possess a valid employment contract; and
- possess a passport and a residence permit, of which the duration is at least equivalent to the duration of the services to be carried out in Belgium in order to ensure their return to their home country or residence country.

Students and Interns

Full-time students lawfully residing legally in Belgium do not require a work permit during official school holidays. For work activities performed during the academic year, a work permit type C is required. This work permit is granted for a maximum period of 12 months and is limited to the duration of the student's stay in Belgium. The work permit C allows the student to work a maximum of 20 hours per week during the academic year.

Students who are taking an internship in Belgium within the context of their study program and interns employed by the Belgian government or by a recognized international institution are exempt from obtaining a work permit.

Non-EEA Nationals

In general, work permits are issued only provided there are not enough workers available in the European labor market within a reasonable period of time for the sector in question or for the specific function concerned (*i.e.*, labor market criterion), and in the case of workers who are nationals of countries linked to Belgium by international agreements or conventions on the employment of workers.

For certain categories of non-EEA nationals, work permits may be issued without the labor market criterion having to be met, which considerably simplifies the process for obtaining a work permit.

Most work permits in this category are issued to the following individuals eligible for a type B work permit:

Highly Qualified Employees or Executives

The labor market criterion is not taken into account if the foreign employee is considered either: a highly qualified employee; or an executive whose annual remuneration amounts to at least respectively

€ 36,355 or € 60,654 gross for 2010 (indexed annually). The validity of their residence corresponds to the duration of their work permit.

For highly qualified employees:

- If the employee earns at least € 36,355 gross salary per year in 2010, the work permit is valid for up to four years and is renewable once for another four years' period. In a renewal application, the regional labor authority may impose additional conditions with regard to the proportional representation of risk groups in the company and the shortage of highly qualified employees on the Belgian labor market.
- If the employee is not seconded and comes from one of the member states of the EU, the work permit will be valid without limitation.

For executives:

- Executives earn at least € 60,654 gross salary per year in 2010 (indexed annually) and hold a management position within the company. There is no limitation on the duration of the work permit.

The application process to obtain a type B work permit takes about four weeks. The employee will have to provide, amongst other documents, a medical certificate, an employment contract, a recent certificate of good conduct and copies of academic certificates and professional qualifications. A work permit type B is always granted for a one year period and must be renewed each year.

The non-EEA family members of highly qualified employees or executives, if more than 18 years old, are equally eligible for a work permit type B. The validity of their work permit will, however, be limited to the duration of the work permit of the non-EEA national

they are joining. The minimum salary requirements do not apply to this category.

Specialized Technician Work Permit

The specialized technician work permit is specifically aimed at specialized technicians or engineers coming to Belgium for a maximum period of six months in order to install, start up, or repair an installation or software application developed or manufactured abroad. It should be noted that the study and analysis of the factual situation at the location of the Belgian customer, the so-called “requirement capturing stage,” prior to the development of the installation or software application, is not included. A foreign employee coming to Belgium to perform such preparatory study and analysis services should obtain a normal work permit.

On the other hand, specialized technicians coming to Belgium for urgent repairs or maintenance work to machines delivered by their foreign employer to a Belgian-based company are exempt from obtaining a prior work permit, provided their stay in Belgium does not exceed five days per month.

Long-Term EU Residents

By Royal Decree, dated June 9, 2009, the Belgian government partially implemented the EC Directive 2003/109/EG with respect to long-term residents from non-EEA countries. Non-EEA nationals, who have obtained the status of long-term resident in another Member State, can obtain access to the Belgian labor market subject to certain conditions. The long-term residence status is a very specific status in accordance with the EC Directive for which a specific residence permit is delivered (*i.e.*, the electronic residence card type D).

Professional Card

Non-EEA nationals require a professional card for any self-employed activity in Belgium, including - depending on the factual circumstances - corporate mandates held with a company established in Belgium. The card is applied for at the Belgian consulate or embassy abroad, together with the visa application or in Belgium, in case the foreign citizen resides in Belgium.

The basis for granting a professional card is much more discretionary than the basis for granting a work permit. Demonstrating economic interests will play a major role in obtaining a professional card. The application procedure takes six months on average.

Other Comments

Caution is to be had for the recent “Limosa” registration obligation when employing foreign staff or developing self-employed activities in Belgium.

In order to simplify the administrative formalities related to the employment of foreign nationals in Belgian territory, the Belgian government has recently adopted a number of measures jointly referred to as “Limosa” (Dutch abbreviation for cross-country information system).

In the long run, the “Limosa” project will lead to the creation of one electronic platform which can be accessed in order to apply for various permits. For the time being, the “Limosa” project implies an additional administrative obligation for employers. Indeed, the first step of the “Limosa” project consists of the obligation for employers who employ foreign employees (including trainees) in the Belgian territory and for self-employed individuals who perform their activities on Belgian soil to communicate a number of details in relation to such professional activities to the Belgian government (*i.e.*,

through a mandatory prior electronic notification of employment/self-employed activities).

The mandatory “Limosa” notification applies to all employees, self-employed individuals and apprentices who temporarily or partially work in Belgium and who usually work in another country and/or are hired abroad. There are various exemptions from the mandatory notification, including (subject to certain conditions) short-term business travel, scientific congresses, foreign government personnel, assembly, installation of goods, and the like.

The Limosa declaration can be made online at www.limosa.be. A declaration certificate (so-called “Limosa-1”) is delivered and can be downloaded or printed at once.

The company with operations in Belgium that makes use of the services of the foreign employees or self-employed individuals, directly or indirectly, is held to verify whether the “Limosa” obligation has been complied with prior to the start of the professional activities in Belgium, through delivery of the so-called L-1 declaration. Non-compliance with the Limosa registration can result in criminal sanctions and monetary penalties for both the foreign employer and the Belgian user of the services.

The identity card for foreigners is also worth a brief mention. Upon legally residing in Belgium for an uninterrupted period of 3 to 5 consecutive years, non-EEA nationals can obtain the so-called “identity card for foreigners” or a residence permit for an indefinite term at the local commune of residence. A residence permit for an indefinite term or an identity card for foreigners allows them to work in Belgium without having to obtain a work permit.

A work permit type A is valid for an indefinite term and for employment with any Belgian employer, as opposed to the more frequent type B work permit that has a limited duration and is valid

for employment with one specific employer/location only. The type A work permit can be granted to qualified employees who have worked four years, which can be reduced to three years in some circumstances, under a type B work permit combined with a legal and uninterrupted residence in Belgium during the 10 years immediately preceding the application. Note that not just any previous employment under a type B work permit is taken into account. Previous employment as, for example, a highly-qualified employee, a specialized technician, a seconded employee, *etc.*, is excluded. The type A work permit is not usually requested, as most foreign employees receive residency rights for an indefinite term, and thus no longer need a work permit, after five years of uninterrupted stay anyway.

Finally, a type C work permit can be obtained by some individuals who legally reside in Belgium and have obtained a valid residency title (*e.g.*, refugees, students) subject to certain conditions. Such type C work permit is valid across Belgium for an employment with any Belgian employer and its duration is dependant on the duration of the residence title with a maximum of twelve months (renewable).

Brazil

Executive Summary

Brazil covers almost 48% of South America. With a rapidly growing population, vibrant business environment, and wealth of resources, the country is an attractive destination for multinational companies and foreign professionals, as well as tourists.

To travel to Brazil, either for work, business or tourism purposes, foreigners must obtain the proper authorization to enter and remain in the country. The regulations that govern immigration in Brazil are numerous, but the visa categories and corresponding application requirements are straightforward.

Key Government Agencies

The National Immigration Council (“Conselho Nacional de Imigração”), among other duties, is responsible for the orientation, coordination and surveillance of all immigration activities.

The General Coordination of Immigration (“Coordenação de Imigração”) of the Ministry of Labor and Employment is responsible for receiving, reviewing and approving work permit applications for foreigners intending to obtain temporary or permanent visas to work in Brazil.

The Department of Foreigners (“Departamento de Estrangeiros”) of the Ministry of Justice deals with requests for modification or extension of some types of visas, deportation, expulsion, extradition and naturalization issues.

The Consular Division of the Ministry of Foreign Affairs, represented by the various Brazilian consulates abroad, is the authority that issues visas and the appropriate documents to those desiring to travel to

Brazil, including those who previously obtained work authorization from the General Coordination of Immigration.

Business Travel

VITUR (Tourist) Visa

Tourist visas may be granted to the foreigner traveling to Brazil for a recreational purpose or visit. The foreigner must have no intention to immigrate and may not participate in activity with monetary reimbursement of any kind.

Scientists, professors or researchers attending cultural, technological or scientific conferences, seminars or meetings may be eligible for a tourist visa if their services are not paid for by organizations or corporations in Brazil, with the exception of their *per diem* allowances or expenses. Artists or athletes participating in amateur sporting competitions may receive a tourist visa if they will not receive any payment for such participation, except in the case of prizes for the winners.

The period of validity for the tourist visa is up to five years and multiple entries into the country are allowed, with each visit not exceeding 90 days. One renewal for an equal period is allowed and may be granted by the Federal Police in Brazil. The total length of stay may not exceed 180 days per twelve-month period.

All tourist visa applications are submitted to and approved by the Brazilian Consulate with jurisdiction over the foreigner, that is, where the foreigner has maintained residence for a minimum period of one year immediately prior to the request.

VITEM II (Business Trip) Visa

Foreigners entering Brazil for a business trip, except when the trip involves the provision of technical assistance (see VITEM V), are eligible for a VITEM II temporary visa. With this type of visa, the foreigner cannot receive any form of payment from the Brazilian company, will remain on the foreign company payroll, and will be rendering services on behalf of the foreign company.

VITEM II visas are valid for up to five years, with a maximum yearly length of stay of 90 days, with one renewal; thus, the total number of days in the country may not exceed 180 per twelve-month period. The days counted are only those days spent within the country, interrupted upon the moment of exit from the country, and recommenced on return.

For citizens of countries that have a reciprocity policy with Brazil, the appropriate visa will be granted upon arrival in Brazil. Travelers on business trips may be asked to show a return or onward ticket as well as proof of means of maintenance.

Renewal of the visa is obtained through the Federal Police Department, and usually requires presentation of a letter from the Brazilian company being visited by the foreigner stating that the business which brought the applicant to Brazil is not yet completed and additional time, and thus an extension, is necessary.

Tourist and VITEM II Temporary Visa Waiver

Foreigners holding passports from the countries listed below do not require a VITUR or VITEM II visa if their intended stay in Brazil does not exceed 90 days (or 180, if duly extended):

Argentina

Hong Kong

Romania

Austria	Hungary	San Marino
Belgium	Iceland	Slovakia
Bolivia	Ireland	Slovenia
Bulgaria	Israel	South Africa
Chile	Italy	South Korea
Colombia	Lithuania	Spain
Costa Rica	Luxembourg	Suriname
Croatia	Macau	Sweden
Czech Republic	Monaco	Switzerland
Denmark	Morocco	Thailand
Ecuador	New Zealand	The Netherlands
Finland	Norway	Trinidad Tobago
France	Paraguay	Tunisia
Germany	Peru	Turkey

Great Britain/UK	Philippines	Uruguay
Greece	Poland	Vatican City
Honduras	Portugal	

Foreigners holding passports from the countries listed below are not required to obtain tourist visas, however, they are required to obtain VITEM II visas for business trips:

Andorra	Guatemala	Malaysia
Bahamas	Guiana	Namibia
Barbados	Liechtenstein	Panama

Holders of passports from Venezuela are only required to obtain VITUR visas after 60 days of stay and VITEM II for business trips regardless of length of stay.

Foreigners holding passports from any country not listed above are required to obtain a tourist visa or a temporary visa (VITEM II) for business trips to Brazil. An updated list of countries with reciprocity agreements with Brazil is available at www.dpf.gov.br.

Training

VITEM I Visa

Cultural trip, training program, study mission or student exchange

The VITEM I temporary visa is granted to scientists, professors, researchers and participants in cultural, technological or scientific missions. Depending on the particular circumstances, the foreigner may or may not receive remuneration for services rendered except for payment of a *per diem* allowance and of living expenses. Non-professional athletes under 21 participating in training programs in Brazil may also qualify for a VITEM I visa, which is valid for two years and is not renewable.

Students pursuing a course of study under a program maintained by an agency dedicated to student exchange may also enter pursuant to a VITEM I. The student exchange entity must be duly registered with the competent controlling agency of the Public Administration.

The visa application, which includes extensive documentation, including proof of the student's acceptance into the exchange program and financial resources, should be filed with the local Brazilian Consulate authority with jurisdiction over the student. Once issued, the visa is valid for a term of one year, no renewal allowed.

Internship

The VITEM I visa is also appropriate for foreigners entering Brazil to participate in an internship, conditioned upon the agreement between the intern and the company or institution, with the involvement of an intervening party (such as an officially recognized exchange program). "Internship" is defined as a practical part of a higher-learning or professional course, which in theory contributes to the professional improvement of the intern. The intern may only receive

payments of “support” or living expenses for their service, which is not legally considered a work relationship. Visas for interns are requested in the applicant’s home country from the Brazilian

Consulate authority with jurisdiction, are valid for one year and are not renewable. Foreigners intending to intern with their foreign company’s Brazilian subsidiary or branch would be required to file a work authorization request and obtain a VITEM V visa.

Training in the operation of Brazilian equipment and machinery

The VITEM I visa can also authorize a foreigner for training in the operation and maintenance of machinery and equipment produced in Brazil, if the trainee is not entering pursuant to a contract with the Brazilian company, and will continue to be paid from a source outside of the country. This visa is valid for 60 days, and is renewable for an additional 60 days.

VITEM V Visa

Professional training without work contract

Foreigners who intend to visit Brazil for professional training without employment ties may qualify for a VITEM V visa. Professional training is considered an activity that immediately follows the conclusion of a superior or professional-level course with the goal of development of aptitudes and knowledge acquired by means of practical experience. This particular VITEM V visa is valid for one year and may not be renewed.

Granting the visa is dependent upon a work permit, authorized by the Ministry of Labor and Employment, which requires proof of conclusion of the superior or professional-level course and proof of remuneration provided by a source outside of Brazil.

A foreigner may not participate in any type of paid activity in Brazil where the payment is made by a Brazilian entity. The application and contract must be filed with the Ministry of Labor and Employment by the Brazilian entity training the foreigner. As noted previously, a different temporary visa, VITEM I, is requested in cases where the foreigner will enter for professional training in the operation and maintenance of machinery and equipment which is produced in Brazil.

Internship with company's Brazilian subsidiary or branch

A foreigner employed by a foreign company traveling to Brazil for the purpose of interning with the company's Brazilian subsidiary or branch may qualify for a VITEM V temporary visa. The Brazilian company must submit the application for the work permit and visa to the Ministry of Labor and Employment. The foreigner must continue to be paid outside of Brazil by the foreign company, and not by the Brazilian company. If the work authorization is given, the foreigner may enter Brazil for one year and may not be renewed. This visa can be requested by foreigners who are ordinary employees of the foreign company or to those who have graduated in a period less than 12 months.

Employment Assignments

VITEM V Visa

Foreigners entering Brazil to provide research skills, technical assistance or professional services pursuant to a cooperation agreement or work contract may qualify for a VITEM V temporary visa, upon approval of a work permit by the Ministry of Labor and Employment.

Unless otherwise noted, the VITEM V is valid for a term of up to two years, or the duration of the agreement or contract, if less than two

years. The VITEM V is renewable for an equal period, unless specific stipulation is made to the contrary within the agreement or contract.

If contracted to work in Brazil, the foreigner will be paid by the Brazilian company and is prohibited from altering or modifying the contract without the express permission of the Ministry of Justice. If the foreigner enters under a technical assistance agreement, then compensation must continue to be sourced from the company abroad and the foreigner is prohibited from engaging in activity outside the realm of the agreement.

Prior to the granting of the visa by the Immigration division, the foreigner must obtain approval of the conditions of the work, in compliance with the requirements set forth by the National Immigration Council. In essence, this work permit allows the applicant to work for remuneration in the Brazilian company in the capacity set forth by the contract.

Professionals under work contract

Professionals entering pursuant to a work contract must satisfy the requisite educational and experience requirements relative to their expected position. In addition, their work contract must be submitted to the Ministry of Labor and Employment for approval.

VITEM V visa requests for professionals must prove that the foreigner has at least one of the following:

- Two years of relevant professional experience and at least nine years of education (intermediate level);
- One year of professional experience after graduation with a relevant university degree; or

- In case the candidate has a relevant post-graduate diploma, no professional experience is required.

Brazil has undertaken to protect and preserve job opportunities for its citizens, and to this end enforces the principle of proportionality, under which all industrial or commercial firms are required to ensure that at least two-thirds of their personnel are Brazilians. The same proportionality (2/3) must exist regarding salary. This means that the total sum of salaries paid to Brazilian employees must be more than twice the amount paid to foreigners.

Technical Assistance

In contrast to the work situations discussed previously, the foreigner entering for the purpose of providing technical assistance is contracted in anticipation of directly benefiting the Brazilian company and remains on the payroll of the foreign company.

In such cases, the VITEM V visa is valid for a period of up to one year, and may be renewed only once for another period of one year. There must be a technical assistance agreement (a covenant or a cooperation agreement are also accepted) executed between the Brazilian company (which will receive the services) and the foreign company (which will provide the services and consequently send the foreigner). Further, the applicant must provide evidence of at least three years of relevant professional experience.

Short Term Technical Assistance Temporary Visa

In case the foreigner that will provide the technical assistance does not need to stay in Brazil for a period over 90 days, a short term technical assistance temporary visa may be granted without all the requirements that need to be accomplished in order to obtain the ordinary Technical Assistance Temporary Visa. The application process for this work permit is usually faster than the other ones, which may be helpful in

case the Brazilian company cannot wait too long to receive the technical services to be provided by the foreigner.

Emergency Technical Assistance Temporary Visa

In cases of urgent need or emergency, the Brazilian Consulate authority may issue a VITEM V emergency temporary visa for foreigners providing technical assistance. The visa is valid for 30 days, with no renewals allowed. In addition, the emergency temporary visa may only be granted one time within a period of 90 days to each foreigner.

This visa may only be granted when the applicant provides evidence of a situation of emergency in a Brazilian company, which requires urgent travel to provide technical services.

An “emergency” is considered to be one that, caused by unexpected circumstances, puts in risk life, the environment or property/assets patrimony, or that had caused the interruption of the operation of the activities of the Brazilian company.

Citizens of Argentina, Paraguay, Uruguay, Chile and Bolivia

In view of a Residence Agreement (“Acordo de Residência Mercosul, Bolívia e Chile”) Brazil signed with the Mercosur countries (Argentina, Paraguay and Uruguay) and also with Chile and Bolivia, which became effective in 2009, citizens of those countries do not need to apply for and obtain work permits in order to live and work in Brazil.

Any person holding a passport from any of those countries and wishing to move to (or, if applicable, remain in) Brazil - with or without the purpose of working – may apply for a simple “permanence authorization” before the Federal Police (if the individual is in Brazil) or to the closest Brazilian consulate (if the

individual decides to apply from his/her home country). Essentially, the only requirement in order to obtain a “permanence authorization” is the submission of proof of nationality, as well as of a clean criminal record.

Even though the authorization in question is temporary (valid for two years), the foreigner may, at the end of that period, apply for a “permanent residence” in case he/she decides to permanently reside in Brazil. The only requirements for the obtaining of the permanent residence authorization is the submission of proof that the applicant has legal means to afford living in Brazil and the presentation of a new clean criminal record.

Other Comments

There are other types of temporary visas less commonly applicable to employment assignments for multinationals.

In addition, a permanent visa may be issued conditioned upon specific qualifications of the applicant, including specialization of skills offered, technology assimilation and attraction of resources to particular sectors of the economy. Further, the Brazilian Consulate may grant permanent visas for “family reunion,” where the foreigner is joining a family member of Brazilian nationality or holder of a Brazilian visa.

In practice, executives who are appointed to management positions (Administrator, Director) in Brazilian companies are also eligible for a permanent visa. The granting of this visa to the executive is conditioned upon the experience of the applicant in managerial positions within the company’s group, as well as their particular managerial abilities.

The granting of some permanent visas require approval of a work permit by the Ministry of Labor and Employment, which may be

granted based upon consideration of the factors noted (foreign investment, experience, skills, *etc.*).

The granting of the permanent visa is conditioned, for a time not to exceed five years, on the exercise of activity of a fixed and certain nature in a determined region within the national territory. The foreigner may not modify the employment conditions before completion of the five-year period, otherwise the permanent visa may be cancelled. The fixed activity and the determined region may not be altered without express consent from the appropriate immigration authority.

Further Information

Baker & McKenzie's *Immigration Laws in Brazil* guide provides further information about Brazilian visas, immigration, and citizenship.

Canada

Executive Summary

Canadian immigration law facilitates both the temporary and permanent movement of workers. In fact, the fastest growing area of movement into Canada, and a key focus of the federal government, is the temporary foreign worker program. Recently, the government introduced major steps to expand opportunities for these workers to remain permanently in Canada. In addition, provincial governments have over the last decade rapidly introduced and expanded their own immigration selection programs, many of them focusing on employee recruitment. No relocation strategy is complete without a review of all federal, provincial and territorial programs.

Key Government Agencies

Citizenship and Immigration Canada (CIC) is the largest of the Canadian government immigration departments, with visa offices around the world and local offices for certain temporary and permanent immigration processing. By and large, the 11 Provincial Nominee Programs are run through provincial and territorial ministries responsible for citizenship and immigration, usually located in government offices within their capital cities. The federal government's department responsible for the labour market, Human Resources and Social Development Canada (HRSDC), receives applications for approximately half of all temporary worker applications where labour market opinions (LMOs) are required. The other half of all foreign workers are LMO exempt meaning they are eligible to apply directly to CIC at a visa office abroad, or Canadian port of entry if visa exempt.

Finally, provincial governments regulate employment standards through their labour ministries, and are increasing their involvement in

the area of foreign workers, and enforcement of employers that do not comply with their laws.

Current Trends

Whereas immigration levels have remained at a steady level (approximately 250,000) for the past decade, the level of temporary entry has substantially increased due largely to labour market demand. Students, workers, and business visitors have seen healthy increases and the trend is expected to continue for the foreseeable future, despite the recent recession. Stronger economic fundamentals and industry performance relative to the G8, with burgeoning natural resources, IT, financial services and advanced manufacturing sectors, ensure a growing demand for foreign workers. In 2009, approximately 180,000 foreign workers bolstered Canada's labour force. Due to the major changes made to Canada's immigration system in late 2008 that will expand opportunities, these foreign workers can now more easily settle in Canada permanently, even in skilled trades occupations, where this was previously more difficult.

On the compliance and enforcement side, both federal and provincial governments will balance the trend to expand economic immigration, with increased vigilance of employers that participate in foreign worker and immigration programs, by introducing new programs to fine and sanction employers. Compliance with foreign worker and immigration programs is crucial for domestic and multinational companies that wish to do business in Canada and avoid serious repercussions.

Business Travel

Foreign nationals may enter Canada to engage in business or trade activities. Generally, the employer's remuneration, principal place of employment and accrual of profits must remain outside Canada. Furthermore, there must be no intent to enter the Canadian labour

market (*i.e.*, no gainful employment in Canada), and the foreign national’s activities must be international in scope. Most often, these activities fall within the areas of research, design, growth, manufacture, production, marketing, sales, distribution, and both general and after-sales services. Attending business or board meetings, conventions, conferences and negotiating contracts are common reasons for business entry. Dependents of business visitors may apply for visitor status to enter into Canada, as can persons employed in a personal capacity by short term temporary residents, such as caregivers.

There is no standard amount of time granted to applicants for business entry. Canadian immigration officers consider the activities being conducted. Generally, sales trips, business meetings, conference attendance or training sessions last only a few days, and the entry time permitted will be consistent with the business needs. However, longer amounts of time will be granted where appropriate. Individuals will generally not be issued a business stay of over six months. Rather, they will have to apply for an extension while in Canada, which is filed at Canada’s inland processing centre in Alberta.

Visa-exempt Nationals

Canada exempts nationals from the following countries from the need to obtain a visa as long as they have valid passports:

Andorra	Antigua/ Barbuda	Australia	Austria	Bahamas
Barbados	Belgium	Botswana	Brunei	Cyprus
Denmark	Estonia	Finland	France	Germany

Greece	Hungary	Iceland	Ireland	Israel
Italy	Japan	Korea	Latvia	Lithuania
Liechtenstein	Luxembourg	Malta	Monaco	Namibia
Netherlands	New Zealand	Norway	Papua New Guinea	Poland
Portugal	St. Kitts/Nevis	St. Lucia	St. Vincent	San Marino
Singapore	Slovakia	Solomon Isl.	Spain	Swaziland
Sweden	Slovenia	Switzerland	United Kingdom	United States
Western Samoa				

This visa exempt list changes from time to time and should always be checked before travel at <http://www.cic.gc.ca/english/visit/visas.asp>. For instance, Canada removed Mexico and the Czech Republic from the list in 2009, giving the reason that there had been a marked increase in the number of “bogus” refugee claims from their nationals.

Training

There is a fine line between when a foreign national can simply enter as a business visitor, and when a work permit is required. Employers must carefully consider the parameters of the training, or plans may go awry at the border, delaying business requirements and training plans.

Training under business entry vs. training requiring work permit

Short-term trainees, particularly employees of a related corporation abroad, will be permitted under the business provisions as long as the trainees continue to be paid abroad, and do not cross over into work, while in Canada.

Those coming to provide training can also often enter as business visitors, including training contemplated in the after-sales service provisions of a contract. For instance, coming to train Canadians on machinery or software does not require work permits, as long as the contract clearly sets out the training requirement.

Public speakers (for conferences/company meetings) may also qualify as business visitors, or require work permits, depending on the situation. Guest speakers for short-term events of less than five days (such as conferences) may qualify as business visitors, or require work permits, depending on the situation. These speakers normally qualify as business visitors if they rent out their own space and charge their own admission. However, commercial speakers hired by Canadian companies to provide training services for their employees require work permits.

Work permits must be obtained for commercial trainers or speakers contracted from outside a company to train Canadian employees (unless the training falls under the after-sales service provisions of a contract). U.S. and Mexican nationals may benefit from the North American Free Trade Agreement (“NAFTA”) provisions that allow

professionals to obtain work permits for pre-arranged training sessions for subject matter within the trainer's profession.

Employment Assignments

In most cases, employers should consider work permits for international assignments. Canadian immigration regulations provide various routes to work permits. Still others have recently been made available through the ongoing development and expansion of provincial nominee programs, which provide for work permits as an adjunct to permanent residence (nomination) applications.

There are three ways in which foreign nationals may enter Canada for international assignments involving activities considered to be "work". They are, from the most straightforward to complex:

- Work that is exempt from the need for a work permit;
- Work requiring a work permit, but exempt from a labour market opinion (LMO); and
- Work requiring an LMO.

Before the most appropriate entry category can be selected, a company must determine whether the employee will be engaged in "business" or "work" activities while on assignment in Canada. There is often a fine line between these two types of entry, as discussed above: business visitors must enter Canada to be doing business, not work.

"Work" generally means an activity for which wages or commission is earned, or one that competes directly with activities of Canadians (even where wages are not being paid). International assignments of a period of more than a week or two tend to fall under the classification of work, save for after-sales services provisions of a contract, or

longer-term training assignments, if the employer and remuneration remain outside Canada.

Activities not considered to be work include volunteer and charity duties for which a person would not normally be remunerated, or helping a friend/family member while in Canada (such as babysitting or small household repairs). Work done via internet or telephone when the employer and remuneration are outside Canada, and self-employment where the individual does not enter the labour market are also not considered to be “work” but rather “business”.

Work that is exempt from the need for a work permit

The vast majority of foreign nationals entering Canada to do “work” rather than “business,” require a work permit. There are, however, certain exceptions to this rule. Individuals who qualify for work permit-exempt work would not typically be international assignees of companies. The most frequent work permit-exempt foreign nationals include:

- diplomats and representatives of international organizations (of which Canada is a member), and their accompanying dependents;
- visiting members of armed forces;
- on-campus work for full-time international students;
- certain athletes, speakers, performing artists, crew, and referees;
- certain individuals on conference organizing committees;
- certain religious workers and clergy;

- students with practicums in the health field;
- emergency workers, including those rendering medical services; and
- certain transportation workers, including aviation inspectors and crew involved in international transportation.

As is evident from this specialized list, the vast majority of companies hiring foreign workers cannot benefit from exemptions and require work permits.

Work permits exempt from Labour Market Opinions

The general rule states that any foreign national doing “work” must obtain a work permit unless there is an available exemption (*i.e.* business visits and other activities in the bulleted list above). There are two types of work permits applicable to international assignments: work permits requiring labour market opinions (LMOs), and those which are LMO-exempt.

LMOs add complexity and time to the process, particularly during and in the aftermath of an economic downturn, when unemployment is higher than normal. Therefore, in considering any international assignment, companies should consider whether any LMO-exempt work permits are available. Canadian immigration law establishes various categories for LMO exemptions. The most common of these categories for international assignees follow in the next section.

Intracompany transfers

Multinational companies seeking to assign foreign employees to Canadian positions often use the LMO-exempt intracompany transferee category. These work permits are initially valid for assignments of up to three years, and extendable in two-year

increments. Executive and managerial-level employees can obtain this status for seven years, whereas specialized knowledge employees are limited to five years.

Executive and managerial-level staff must generally manage other employees, although management of crucial company functions or processes may qualify. Employment in a specialized knowledge capacity requires proof that the employee holds knowledge of the organization's products, services, research, equipment and techniques or an advanced level of knowledge about the position that is unique, and not ordinarily held by others within the industry. The applicant should be coming from a similar position at an affiliate outside Canada, which he/she has occupied for at least one continuous year in the past three.

There are a number of affiliate relationships that qualify to be eligible under this category, but all generally rely on common control (*e.g.*, parent-subsidiary, sister corporations, branch or representative offices).

Under Canada's previous immigration law, the intra-company provisions were more generous to U.S. and Mexican nationals under both NAFTA and General Agreement on Trade in Services (GATS). Current law creates parity between nationals qualifying under these international agreements, and all other workers, such that it no longer makes a difference which intra-company transfer provisions are used. That being said, there are definite advantages provided by these and other international agreements for international assignees.

International Agreements

Many International Agreements other than NAFTA and GATS allow international assignees with certain nationality to obtain work without labour market opinions, as long as they have employment opportunities in Canada. These agreements include:

- Artists Residencies Program (USA, Mexico)
- Professional Trainees (Bermuda)
- Canada Chile Free Trade Agreement (“CCFTA”)
- Film Co-Production Agreements
- International Air Transport Association (“IATA”)
- Seasonal Agricultural Program (Certain Caribbean countries)
- Professional Accounting Trainees (Malaysia)
- Scientific and Technical Cooperation Agreement (Germany)

The most widely commonly used of the international agreements for international employment transfers are still the NAFTA, CCFTA and GATS, which both allow certain professionals and skilled workers to come to work in Canada for periods of up to a year (90 days in the case of GATS, subject to extensions).

North American Free Trade Agreement (NAFTA)

The NAFTA provides expanded mobility and foreign workers rights for citizens of the United States and Mexico, although in the case of Mexico, some of the benefits of expended rules have been complicated by the visa requirement imposed by Canada in June 2009.

The “NAFTA Professional” category contains a list of over 60 occupations, the most commonly used of which include accountants, architects, economists, engineers, hotel managers, industrial/graphic/interior designers, lawyers, management consultants, research assistants (in post-secondary institutions), scientists (botanists, geologists, chemists, etc.), scientific technicians

and technologists, teachers, technical publications writers, urban planners and computer systems analysts. Some of these require licenses, and/or a post-secondary education. Health professions (which all require degrees and provincial licenses) include doctors, nurses, dentists, nutritionists, dietitians, medical laboratory technologists, occupational/physiotherapists, pharmacists, psychologists and veterinarians.

These NAFTA Professional work permits are issued for up to a year, but may be extended multiple times in most occupations.

General Agreement on Trade in Services (GATS)

GATS international mobility provisions are much narrower than NAFTA's, although GATS applies to over 150 signatory countries (including the U.S. and Mexico). GATS only provides for one 90-day work permit in any 12-month. Its list contains period for nine occupations: engineers, agrologists, architects, foresters, urban planners, foreign legal consultants, land surveyors, geomaticists and senior computer specialists. All but the last two occupations require licensing and degrees. Computer specialists are given the choice between post-secondary credentials, equivalent or work experience.

Reciprocal Employment

This category can be used for international exchanges both in public and private sector contexts. The purpose of this LMO exemption is to provide complementary opportunities for international work experience and cultural interchange. It includes well-known student work-abroad programs (such as SWAP and AISEC), which are negotiated on a reciprocal basis by Canada's Department of Foreign Affairs and International Trade.

Companies can also use this exemption category if they create equivalent opportunities for Canadians abroad. For companies to

benefit from these work permits, a formal exchange or employee transfer program, or at minimum positions for Canadians sent abroad, should be provided. Entry under this exemption category must result in a neutral labour market impact. Note that direct reciprocity does not need to be demonstrated for academic exchanges.

Provincial Nominee Programmes (PNPs)

PNPs are run by each province and territory and result in a nomination for permanent residence in Canada. A side benefit of receiving a nomination in most PNP employment categories is the ability to receive an LMO-exempt work permit. Specific rules cannot be neatly summarized because the eleven PNPs each have distinct rules. Suffice it to say, PNPs are another valuable tool in an HR manager's arsenal in avoiding the need for an LMO.

Other types of common LMO-exempt work permits

Several other LMO-exempt categories are available, and include:

- “Significant Economic Benefit” work permits;
- Entrepreneurs/self-employed work permits;
- Post-graduation employment (for international students); and
- Research, educational or training programs, including post-doctoral fellows and award recipients.

These categories are not traditionally used for intra-company international assignments, but are useful alternatives to consider for recruitment strategies in other contexts.

IT/Software Workers is over

A special program was created in 1996 to facilitate processing of work permits for IT specialists in seven then high demand occupations: senior animation effects editors; embedded systems software designers; MIS software designers; multimedia software developers; software developers (services); software developers (products); and telecommunications software designers. The occupational descriptions became somewhat outdated, and the government considered changes to them, but in the aftermath of economic downturn, decided to eliminate this exemption category. Most IT workers will now have to obtain work permits through a Labour Market Opinion.

Work permits requiring Labour Market Opinions

International assignees who do not fit into any of the exemption categories discussed above must obtain a labour market opinion before they are eligible to receive a work permit. LMOs would typically be necessary for persons who are not being transferred from a foreign affiliate, who have not studied in Canada, and who do not have a designation that could qualify under one of the NAFTA or GATS professions. LMOs are obtained from Human Resources and Skills Development Canada (HRSDC) through their customer-facing arm, Service Canada, offices across the country.

The LMO process is lengthy: it can take anywhere from three weeks to six months to adjudicate (depending on the province, and the case). The HRSDC officer takes six factors into account in adjudicating the foreign worker request, namely whether:

- the work is likely to result in the direct job creation or job retention for Canadian citizens or permanent residents;

- the work is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- the work is likely to fill a labour shortage;
- the wages and working conditions offered are sufficient to attract Canadian citizens or permanent residents and retain them;
- the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents;
- the employment is likely to adversely affect the settlement of any labour dispute in progress.

The process is also complex in that it includes the requirement to recruit and advertise, screen out non-qualifying and interview qualifying applicants and explain why Canadians do not qualify for the position.

Even if the application for the foreign worker confirmation is successful, employers must undertake to train Canadians to ultimately take over the position, hence the “temporary foreign worker” program title. An employer must ultimately satisfy the government that the foreign worker will have a neutral or positive economic effect on the Canadian labour market.

Given the lengthy LMO timelines, companies can apply simultaneously for the work permit with CIC. However, a work permit cannot be issued by CIC until HRSDC grants the LMO. Visa-exempt individuals may apply directly with Canada Border Services Agency (CBSA) at a port of entry if in possession of an LMO, avoiding CIC.

Companies requiring many foreign workers may apply for bulk LMOs, which facilitate the issuance of individual-specific LMOs at a later date. Bulk approvals are useful where larger-scale labour market shortages can be demonstrated, and recruiting may occur at a later date. Another bulk option newly available to Alberta and British Columbia employers, called the E-LMO, accelerates the approval process, for jobs in 33 critical skilled occupations.

A new program, commonly referred to as the “Low-skilled Pilot,” allows companies to obtain LMOs for semi and low-skilled foreign workers if the employer meets hiring conditions, including transportation costs and providing affordable housing.

Finally certain industries have approached HRSDC for industry labour market validation letters. This has helped industries such as the IT and construction industries to obtain concessions, having been able to demonstrate grave labour market shortages.

It should be noted that any of the various LMO options outlined above are subject to refusal in the current labour market environment with relatively high unemployment in certain regions of the country. Back-up strategies should always be considered.

Province of Quebec

Quebec is the only province that has its own immigration selection system which is distinct from other provincial nominee programs. In terms of work permits, international assignees who benefit from any of the above-mentioned foreign worker exemptions need not apply to the province. Those who require an LMO must first obtain a Certificat d’Acception (CAQ) from Quebec, and only then can apply for a work permit.

Spouses and Children

Spouses are eligible for open work permits, and dependent children are eligible for study permits for most international transfers. In order for spouses and children to qualify for dependent status, the transferee simply has to be entering Canada for a high-skilled position that falls under Canada's National Occupation Classification codes O, A and B. These classifications cover both professional occupations and skilled trades. For instance, managers, financial analysts, engineers and scientists fall under the NOC O and A codings. Secretaries, bookkeepers, bricklayers and drywallers are all NOC B codings.

Spouses, including common-law and same sex spouses, receive open work permits with the payment of a filing fee. This work permit generally lasts the duration of the spouse's permit, and allows for work at any employer, in any occupation (subject of course to licensing and other workplace laws of Canada). One caveat is that the accompanying spouse must pass a medical examination before being able to work with children or in a health care occupation. In a recent Pilot program, adolescents whose parents are working in the Province of Ontario may also obtain a work permit. This rule does not apply across the country.

Turning to studies, school children entering Grade I (about six years old) usually require study permits when accompanying international transferee parents.

Spouses and children, along with the primary worker, are also eligible for public health insurance in most cases. This insurance is provincially run, and provincial rules must be checked on a case-by-case basis.

Other Comments

Finally, in terms of permanent residence, two major changes introduced in late 2008 have changed processing priorities to favour

long-term options for temporary foreign workers. Both (Bill “C-50”), and the Canada Experience Class (CEC) provide quick routes to permanent residence for foreign workers in NOC A, O and B categories. Aside from these federal permanent residence programs, foreign workers should also consider provincial nominee programs, which also provide quick routes to both work permit and immigrant status. Any intracompany transferees considering long-term moves to Canada should also consider both customs and tax strategies, such as the creation of an immigration trust. Our Toronto Office has written a Canadian Immigration Manual on these topics, and we would be pleased to provide you with a copy upon request.

Likely changes to Canada’s foreign worker program include new enforcement measures, such as penalties against non-complying employers. These changes will likely also be implemented in 2011, but as of the time of writing (August 2010) are still unannounced.

Another new initiative is the establishment of provincial-federal Temporary Foreign Worker Agreements, which are expected to create new opportunities for companies’ international assignments. Many of these groundbreaking initiatives in Canada were precipitated by the significant growth of temporary entry to Canada, driven by broadly accepted statistical and policy findings that the future growth of Canada’s labour market will be entirely driven by immigrants (and foreign workers) by 2013.

Further Information

Baker & McKenzie’s *Canadian Immigration Alerts* provide regular updates on current developments and the firm’s ***Canadian Business Immigration Manual*** provides a detailed overview of Canada’s immigration laws.

Chile

Executive Summary

Chilean law provides many solutions to help employers of foreign nationals. These range from temporary, nonimmigrant visas to permanent residence. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

The respective Chilean Consulate, if the applicant is outside Chile, is responsible for visa processing at consular posts abroad. In case the applicant is already in the country, the Ministry of Interior, through its Immigration Department (“Departamento de Extranjería y Migración”) will process visas. Inspection and admission of travelers is conducted by the National Customs Service at Chilean ports of entry and pre-flight inspection posts.

Current Trends

Chile has changed in the last two decades from an exclusive emigrants generating country to a place of interest to immigrants from several nationalities. Yet compared with other countries, foreigners represent a small part of the country’s population. Even so, the presence of so many multinational companies in Chile has increased the number of visa applications significantly in the last decade.

Foreign workers are protected by Labor Law almost in the same way as Chilean employees. Only a few differences are observed (*e.g.*, a company operating in Chile must not have more than 15% of foreign employees, with the exception of foreign professionals and technicians).

Immigration is taking on more importance in the country's legislation. A new Immigration Regulation that includes international commitments made by Chile, is part of the current Government's agenda.

Business Travel

Tourist in Business Travel

Foreign nationals coming to Chile with short term business purposes and without engaging in remunerated activities are considered tourists and, as a general rule, do not require previous authorization to enter the country. Only individuals from certain nationalities (*e.g.*, Cubans, Chinese) require such authorization, called the Tourist Visa, which can be requested at the Chilean Consulates of the country of origin.

Tourist status authorizes a broad range of commercial and professional activity in Chile, including consultations, negotiations, business meetings, marketing and product promotion activities, conferences. Employment in Chile, however, is not authorized.

The permitted length of stay is up to ninety days, with the possibility of stay extension applications for up to another ninety days (days are counted from the date of entry to Chilean territory). The Border Control Authority may limit the period of stay at the moment of entering the country.

An accompanying spouse or children can be admitted under the same Tourist status. Proof of financial ability to stay in Chile may be required at Police discretion.

Training

As Tourist

For short term training for up to 180 days - including all possible extensions, which are discretionary - tourist status is sufficient. The features of tourist status described above for Tourist in Business Travel are applicable.

Remunerated activities are allowed unless the foreign national receives a Work Permit, which is a special tourist visa that enables foreigners to work for a limited period of time. In order to obtain it, a letter from the visa sponsoring company is required.

As Holder of a Temporary Visa

A Temporary Visa allows its holder to stay in the country for a maximum period of one year and may be renewed only once for the same period. The temporary resident visa is granted to foreigners whose residency is considered useful or advantageous for the country and allows its holder to carry out any legal activities without special limitations. This is the case of executives, investors, traders, fund holders and, in general, business people who travel to Chile for periods lasting more than ninety days for reasons of their activities or interests in the country.

This visa is granted as a “holder” to the interested person, as well of a “dependent” to the members of the family.

Once the one year period has elapsed, the holder may apply for an extension thereof or permanent residency in the country. After two years of residence in Chile, the holder shall either apply for permanent residency or leave the country.

Student Visa

In case training involves studying in an educational institution duly acknowledged by the State, a Student Visa can be used. The duration of this visa is up to 1 year renewable for equal terms. This visa does not allow its holder to execute remunerated activities, yet an additional work permission can be requested.

Employment Assignments

Work Contract Visa

This is a visa granted to foreign nationals who come to Chile with the purpose of complying with a work contract. The same visa is given as dependents to the family of the applicant. The dependents cannot perform, as such, remunerated activities, unless they apply for their own visas.

In order to obtain this visa, a number of conditions must be satisfied.

First, the employer (company or individual) has to be legally domiciled in Chile.

Second, professionals or specialized technicians must document their qualifications with copies of their corresponding degrees or titles.

Third, the work contract on which the visa is based must be signed and notarized in Chile by the employer and the employee or their representatives. However, if the applicant is abroad, the work contract may also be submitted to the Chilean Immigration Authorities with the sole signature of the employer. If the contract is signed abroad, the signatures have to be authorized by the corresponding Chilean Consul and then legalized in Chile before the Chilean Foreign Affairs Ministry. Of course, the work contract has to comply with Chilean labor and social security laws.

Fourth, the parties have to stipulate to a special clause in the work contract stating the obligation of the employer to afford the employee and his family the costs of their return to their country of origin or to the foreign country that both parties agree.

The Work Contract Visa has a maximum duration of 2 years and it may be extended for the same term. If the duration term is not specified in the passport, it will be understood that such term is the maximum.

In any event, termination of the work contract will cause the visa to expire. The sponsor company is obliged to notify the Immigration authorities upon termination of the corresponding employment agreement. This is without prejudice to the right of the visa holder to apply for a new visa or permanent residency.

The holder of the Work Contract Visa will be able to apply for permanent residency only after 2 years as a holder of such visa.

In case the foreign national executes his activities in a company in Chile, but will be remunerated abroad, a Temporary Resident Visa is the appropriate one.

Temporary Resident Visa

The temporary resident visa is granted to foreigners whose residency is considered useful or advantageous for the country. This is the case of executives, investors, traders, fund holders and, in general, business people who travel to Chile for periods lasting more than ninety days for reasons of their activities or interests in the country.

As in the case of the Work Contract Visa, this visa is also granted as a “holder” to the interested person and as a “dependent” to the members of his family.

The temporary resident visa has a maximum duration of 1 year and may be renewed only once for the same period. If the visa stamp does not specify the term for which it was granted, it will be understood that its duration is the maximum. Once the 1 year period has elapsed, the holder may apply for an extension thereof or permanent residency

in the country. After 2 years of residence in Chile, the holder shall either apply for permanent residency or leave the country.

Work Permit

For work assignments of up to sixty days, including possible extensions, a Work Permit is a sufficient authorization. This is a special tourist visa that enables foreigners to work for a limited period of time.

Entry based on International Agreements

Chile has subscribed Free Trade Agreements with numerous countries in the world, (*i.e.* US, Canada, Mexico, the EU, etc.,) that contain alternatives for entering the country.

Foreign nationals from these countries coming as business visitors, professionals, and intra-company transferees, as well as traders and investors, may obtain temporary residence which allows them to work. It is possible for them to work for more than one employer at the same time, provided that such jobs are within the category applied for, as mentioned in the respective application. The permitted length of stay varies from up to 6 months to 1 year according to the business person category. Extensions can be requested.

Family dependents may accompany the principal visa holder if they meet the general immigration regulations or may be qualified separately according to the Agreement or according to the general immigration rules.

Business persons may apply for these specific visa categories in any Chilean General Consulate abroad. Visa applications may also be submitted at the Aliens and Migration Department of the Ministry of the Interior, in Santiago.

Please note that the Free Trade Agreement between Chile and the U.S. exempts for the first eighteen months U.S. citizens from the foreign employment limitation.

For more information on these Free Trade Agreements please visit:

- www.direcon.cl
- www.extranjeria.gov.cl/filesapp/manual_tlc_usachile_en_ingles.pdf
- www.extranjeria.gov.cl/filesapp/manual_castellano_canada.pdf
- www.extranjeria.gov.cl/filesapp/manual_mexico.pdf

Other Comments

Permanent residence can be obtained after residing in the country. Terms of residence varies according to the type of residence held. In the case of a Work Contract Visa, permanent residence can be required after a stay of 2 years without interruption. For Temporary Visa holders, the request can be made after a stay of 1 year without interruption. Student Visa holders can make their request after a stay of 2 years without interruption, with the additional requirement that the student must have finished studies.

A resident with Permanent Residence has the right to reside in Chile indefinitely and carry out any type of legal activity. Permanent Residence is tacitly revoked if the main holder remains outside Chile during an uninterrupted period of more than 1 year.

Chilean Nationality can be obtained by children born in Chile of foreign parents in a transit status (*e.g.*, tourists, irregular residents) and children of foreigners who are in Chile performing a specific service

to their Government. In addition, Chilean Nationality can be granted by special grace through a law. This does not occur frequently, but has been granted to entrepreneurs who have made a significant contribution to Chile.

Colombia

Executive Summary

Colombian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for business purposes. Depending on the activities to be executed in the country, foreign citizens can obtain temporary permits or visas. Requirements, the need to validate professional degrees or obtain temporary licenses and the possibility of earning salaries or fees in the country vary by visa classification.

Key Government Agencies

The Ministry of Foreign Affairs located in Bogota, D.C. and the Colombian Consulates abroad are responsible for visa processing. The issuance of employment visas for the first time must be performed abroad before a Colombian Consulate - unless (i) the foreign citizen holds a Colombian business visa or (ii) the Ministry of Foreign Affairs - In certain cases involving restricted nationalities, the consulates require prior authorization from the Ministry of Foreign Affairs.

The Ministry of Social Protection is in charge of certifying compliance of the ratio between national and foreign employees, which is a requirement to obtain an employment visa or a visa to work in Colombia.

The Administrative Department of Security (“DAS”) is in charge of the issuance of temporary permits and foreign IDs, and performs the investigations and enforcement actions involving local employers, sponsoring entities, and foreign nationals. The Professional Councils are also part of the visa process in case foreign citizens plan to execute activities involving their professional experience in the country. The determination of whether a foreign national executes activities that

involve his professional experience is a prerogative of the professional councils.

Current Trends

Colombian Consulates are extremely discretionary and in occasions are inclined to go beyond the law and ask for additional documentation or requirements. Between July and November 2009 the government amended some topics of the immigration legislation and the fees of some kinds of visas. These changes were made enforceable by the government since December, 2009 in order to improve some specific provisions of immigration law to make them more suitable with the current needs of the country, commercial strategies, and business opportunities.

Business Travel

Business Visa

As a general rule, foreigners who visit the country on short-term visits without receiving any fees or compensation in Colombia may request a business visa. The business visa applies to the foreigner that exercises the legal representation, or occupies a directive or executive position in a foreign company. This company must have economical connections with a national or foreign company established within Colombia. The foreigner that acquires this kind of visa may develop activities of business promotion related with the interests of the company, such as the assistance to boards of partners or directors, and the supervision of the operations of economically, strategically and legally related companies. This kind of visa is acknowledged for a term of until four years for multiple entries and authorizes a stay of up to one (1) year per each entry. The foreigner entering Colombia under a business visa cannot settle in Colombia or receive fees or compensation in Colombia.

Foreigners who come to work on issues connected to any kind of free trade agreement involving Colombia may also enter by means of a business visa. Exceptionally for foreigners that intend to enter to Colombia in the frame of a negotiation of a free trade agreement, this visa may be granted for up to four (4) years for multiple entries and authorizes a stay of up to two (2) years per each entry. Under this scenario, foreign citizens are allowed to receive fees or compensations in Colombia as payment for their work as negotiators of the agreement - this option was included recently by the government by the Decree 2622 of 2009-

As from July 2009, foreigners are able to apply for a general business visa for the first time within Colombian territory.

Family members of the person entitled to a business visa are now allowed to obtain a temporary beneficiary visa. Normal government fees are waived for nationals of Spain, South Korea, Japan, United States and Ecuador.

Visa Waiver

The normal visitor visa requirement is waived and citizens of certain countries may be issued a temporary visitor permit by DAS at the time of entry to engage in one of the following activities, provided that the foreigner does not have a labor relationship with the Colombian sponsor and will not receive any kind of remuneration in Colombia (compensation or fees):

- Academic activities in seminars, conferences or expositions.
- Courses or studies for less than six months.
- Medical treatment.
- Interviews within recruitment processes.

- Commercial contacts or visits of less than one week.
- Provide training for a term of 180 business days.

Temporary Technical Permit

A temporary technical permit may be granted by the DAS to foreigners seeking to develop urgent technical services for a maximum term of 45 calendar days renewable if the emergency continuous for up to 180 calendar days per each calendar year. This kind of permit is commonly granted to technicians or engineers to inspect, test, or install equipment, or perform any duties related to their technical expertise. The temporary technical permit must be requested by the local sponsoring company, for which purpose it must submit the required documents to DAS, at least three business days in advance.

Visa waiver benefits are available to citizens of: Alemania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bhutan, Bolivia, Brazil, Brunei-Darussalam, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Federal State of Micronesia, Fiji, Finland, France, Germany, Granada, Greece, Guatemala, Guyana, Holy See, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Korea, Malaysia, Malta, Marshal Islands, Mexico, Monaco, Netherlands, New Zealand, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Saint Kitts and Nevis, Saint Vincent and Grenadines, Saint Marino, Saint Lucia, Salomon Islands, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Trinidad and Tobago, Turkey, United Kingdom, United States, Uruguay, and Venezuela.

Employment Assignments

Employment Visa

Under Colombian immigration laws, any foreigner that intends to undertake work activities in the country must request an employment visa or a visa under a different category that allow him/her to work (e.g. spouse of Colombian national or parent of Colombian national). The employment visa allows foreigners to stay and work in Colombia usually for a one or two years period or for a lower period, depending on the information given to immigration authorities. The employment visa is usually granted to foreigners in the presence of the following events:

- Engagements by private or public entity, foreign or national, to perform a job or an activity in the foreigner's profession or specialty or to execute technical activities.
- Executives, directive personnel, technicians or administrative personnel of private or public foreign entities, transferred from abroad, to cover specific positions in their companies, Colombian branches or subsidiaries.
- An employee of a Colombian entity to work on specific projects requested by Colombian companies.
- Foreigners transferred to Colombia from abroad in order to render independent services to companies domiciled within the country without having a labor relationship with said local companies.
- Paid services carried out by academics required by higher education institutes, foreigners appointed by an entity of the Colombian Government, artists or sports people, journalists who are foreign correspondents.

Employment visas are issued for a maximum term of two years and allow multiple entrances. They expire automatically if the foreigner is absent from the country for a period that exceeds 180 continuous days and may be renewed for a period of two years or less according with the term of the labor contract and the evaluation of the submitted documents.

This proceeding must take place previous to the date the foreigner begins to render his/her services in favor of the local company.

The spouse or permanent companion, parents and children of the person obtaining a work visa may obtain a temporary beneficiary visa, which allows them to enter Colombia to study or engage in home activities but does not entitle them to work.

The foreigner will only be allowed to perform the activity authorized in the employment visa. In the event there is any change of activity or position, the foreigner and the sponsoring company must inform in writing to immigration authorities notifying the change and, if such is the case, request the change of the visa.

Obligations of Register and Control

Any foreign national who obtains a visa for more than three months of validity should appear before the Foreigners Department of DAS in order to be registered on the immigration files and to obtain a foreign identity card (“cédula de extranjería”). When immigration authorities issue or renew any visa, the foreigner and the family² must appear before DAS within 15 calendar days of the day of entry or visa issuance (e.g., in the case of renewals) to register and obtain the foreign identity card. Employers (entities, institutions or individuals)

² Children above seven (7) years old.

must inform the DAS of the hiring and termination of foreigners within 15 calendar days of hiring or termination.

This also applies to renewed or changed visas. In such case, employers must inform in writing to DAS the continuity of the labor relationship. Foreign citizen must notify the DAS and the Ministry of Foreign Affairs about any change of residence or domicile within 15 days of the change.

Other Comments

The issuance or renewal of visas is a discretionary decision. Furthermore, the authorities have the power to deny those petitions without the opportunity to appeal the decision. Prior to application, the best practice is to informally visit the immigration authorities in order to review with them the respective documents.

It is important to minimize the risk of denial, since a new petition may be presented only after a six-month wait if a visa request is denied.

Renewals of any visas may be obtained before the Ministry of Foreign Affairs in Bogotá D.C. or before the respective Colombian Consulate abroad, provided that visas are not to be expired. The requirements to obtain visas change periodically and should be verified. The process to obtain the visa before the Colombian Consulate abroad normally takes three to five business days. And the process to renew the visa before the Ministry of Foreign Affairs normally will conclude in the same day. Foreigners that stay or visit Colombia can only practice the profession or the activity authorized by the respective visa. In the event the foreigner changes activity, there is a requirement to submit a petition to have a new visa with the change of activity to the Ministry of Foreign Affairs in Bogotá, D.C.

Non-compliance of immigration regulations will be sanctioned with the impositions of fines and, in some cases, with the deportation or the expulsion of the foreigner.

Czech Republic

Executive Summary

The Czech Republic provides many solutions to help employers of foreign nationals. These range from temporary, non-immigrant visas to permanent immigrant visas. Often, more than one solution is worth considering. Requirements, processing time periods, employment eligibility and benefits for accompanying family members vary by visa classification.

Key Government Agencies

The relevant Czech Labor Office is responsible for the processing of a work permit. The Foreign nationals Police Service is responsible for visa processing with the assistance of Czech consular posts abroad. Most non-EU country citizens' visa applications require first a notification of unoccupied job by the potential employer as well as that the foreign national apply and obtain the work permit to be employed in a specific job, time, place and for a specific employer, *i.e.*, prior to applying for Czech employment visa.

Current Trends

Border protection activities and enforcement of immigration-related laws that impact employers and foreign nationals increased not only once the Czech Republic joined the EU in 2004, but have currently further increased because of high unemployment rates. Employers of foreign nationals unauthorized for such employment are being more and more subjected to civil penalties and the same with respect to such foreign nationals. In addition, it is more difficult to obtain a work permit for employees from certain countries.

Czech authorities require that non-EU country citizens possess a passport that is valid for three months beyond the intended stay in the

Czech Republic (*i.e.* beyond the applied visa period). Additionally, proof of finances bear the costs of stay and sufficient travel health insurance is required.

For example, according to Czech law, U.S. citizens entering the Czech Republic for tourist purposes may only stay on the territory of the Czech Republic and Schengen countries for a period of up to 3 months within any 180 day period. If he/she interrupts his/her stay on Schengen territory (including Czech Republic) within these 180 days, the period of stay on Schengen territory (all countries together) is counted together with any 180 days (*i.e.* exempting only those days when he/she is out of Schengen territory). However, any U.S. citizen is prohibited to work on the Schengen territory without a “working” visa.

A foreign national staying in the Czech Republic on the basis of a visa is obligated to report the beginning of the stay, place of residence and expected length of stay to the foreign national’s Police within three working days from arrival. If the foreign national will stay with a person/entity accommodating more than five foreign nationals for a consideration (*e.g.*, hotel), registration must then be done by the provider of the accommodation.

After being granted a Czech visa, foreign nationals are obligated to then report all changes to the locally appropriate Foreigner Police. Non-EU country citizens are obligated to report a change of residence in the Czech Republic and all other changes within **three** working days from the date on which such change occurred (except of employees having long term visa, who notify change of their address within thirty days from the date on which such change occurred). Changes that trigger reporting requirements include:

- Change of passport;
- Change of residence address in the Czech Republic;

- Change of marital status;
- Change of name;
- Change of employer - also requires prior change of the work permit;
- Granting of birth number; and
- Reporting a loss of any immigration document.

Foreign nationals are obligated to, upon prior request of local authorities:

- Prove their identity with a valid passport or a residence permit card, if requested by police, and prove that their stay in the territory is legitimate;
- Surrender the document issued by police, if its validity has expired (with the exemption of the identity card and permanent residency card on which the foreign national traveled and entered the territory of the Czech Republic);
- Report to police a loss or theft of documents issued by the police, or passport; and
- Submit to such actions as taking fingerprints, video recording, medical examination, etc. as provided by law, if requested by police.

Any foreign national must have valid and effective health insurance covering the entire period of stay in the Czech Republic and the evidence of such health insurance must be submitted to local authorities when applying for and collecting a Czech visa in addition to any requests by local authorities:

- When applying for a short-term visa - for full period of stay, *i.e.*, totaling 90 days (unless requested visa for a shorter period);
- When collecting a short-term visa;
- After arriving in the Czech Republic and when registering a short-term visa with the police;
- When applying for and collecting a long-term visa;
- After arriving in the Czech Republic with a long-term visa - when registering the visa with the police.

Travel health insurance coverage must be for the territory of the Czech Republic with a limit medical care costs of at least EUR 30,000, including repatriation of the body in case of death. In addition, it must be a health insurance company recognized by local authorities and not requiring costs co-participation by the employee.

EU country citizens who have not applied for a Residence Permit Card are obligated to register with the Foreign Police no later than within 30 days of the date of last entry into the Czech Republic, if their stay is expected to exceed 30 days. Such obligation also applies to their family members, if they stay inside the territory of the Czech Republic.

This obligation does not apply to those foreign nationals who fulfill the obligation via the person/entity providing them with accommodation, based on the assumption that the person/entity providing the accommodation fulfils such duty. EU country citizens, upon obtaining a permit for temporary (permanent) residence on the territory of the Czech Republic, are obligated to report each and every change within three working days of such change occurring.

It is recommended to insist on a passport being stamped with an entry stamp at the Czech border whenever a foreign national crosses.

Violation of immigration rules may result in a fine, deportation, prohibition of stay and, in special cases, criminal proceedings.

Border protection activity and enforcement of immigration-related obligations have recently increased due to high unemployment rates. Employers of foreign nationals unauthorized for such employment are increasingly subjected to civil penalties.

Please note that there is no legal entitlement for issuance of a work permit or Czech visa - it is solely at the discretion of local authorities.

Business Travel

Business Short-term Visa - Type C

Single entry - The maximum duration of a single stay in the Czech Republic on a single entry visa is limited to 90 days (or shorter period stated in the visa). This visa allows foreign nationals to enter, stay and leave only once. The visa may be used at any time stipulated in the visa.

Multiple entry - The maximum duration of a single stay in the Czech Republic on a single entry visa is limited to 90 days in total (or shorter period stated in the visa). This visa allows foreign nationals to enter, stay and leave the country two or more times. The visa may be used at any time stipulated in the visa until the permitted number of days of entry and stay is reached.

Allowed purposes – Tourism, visit of a person (invitation necessary), cultural purposes, sports purposes, study purposes, employment and scientific purposes, business trip, official (political), other.

This may also be issued as a Schengen type of visa. In such cases, the total duration of the stay of the foreign national on the territory of Schengen countries may not exceed three months during six months from the first date of entry into Schengen territory.

Business Long-term Visa – Type C + D or D

Allowed purposes – Employment, business, participation in a legal entity, study, joining his/her family, sports, medical care, to take over permanent residency, for scientific research. This is usually issued for a period of up to one year.

Visa Waiver

EU citizens do not need a work permit or visa to stay or work in the Czech Republic. They are subject to the registration requirement only. This similar treatment also applies to citizens of Norway, Lichtenstein, Iceland, and Switzerland. Some non-EU country citizens traveling to the Czech Republic as tourists only are not required to obtain a Czech visa, provided that their stay does not exceed the stipulated number of days. These individuals are only subject to the registration requirement.

Citizens of the following countries are allowed to arrive in the Czech Republic for tourist purposes without a visa (i.e., if their stay is not for gainful/employment purposes and limited to 90 days in any 180 days period):

Andorra, Australia, Antigua and Barbuda, Argentina, Bahamas, Barbados, Brazil, Brunei, Guatemala, Honduras, Chile, Croatia, Israel, Japan, South Korea, Canada, Costa Rica, Malaysia, Mauritius, Mexico, Monaco, Nicaragua, New Zealand, Panama, Paraguay, Salvador, San Marino, Seychelles, Singapore, USA, Saint Christopher and Nevis, Uruguay, Vatican and Venezuela.

Training

The same options apply as for employment assignments.

Employment Assignments

EU country citizens do not need a work permit or visa to stay or work in the Czech Republic. They are subject to the registration requirement only. This similar treatment applies to citizens of Norway, Lichtenstein, Iceland and Switzerland.

Other foreign nationals may be employed, provided that they have been granted a work permit and a residence permit (visa for employment purposes).

Employers must notify an unoccupied job to the Labor Office. The employer (recipient employer) may be a legal entity registered in the Czech Republic, a foreign company's Czech branch office, or a foreign company authorized to do business in the country. The employer must also show that the job cannot be filled by Czech workers.

An application for a work permit for a foreign national is also filed at the local Labor Office. This can be filed by the foreign national. Thereafter, the foreign national may use the approved work permit to apply for a visa at a Czech Embassy or consular post abroad. Generally, a visa may only be issued by the Embassy or Consulate in the country where the application was submitted.

Work permits are valid only for employment, the specific job, site and the employer listed on the permit. A change in any of these will require a new work permit.

Please note that a work permit to employ a non-EU country citizen in the Czech Republic is not required - but a visa is, in most cases, required if the employee does not perform work within the territory of

the Czech Republic for more than any seven consecutive calendar days or, in total, thirty days within a calendar year, provided that the employee is at the same time a:

- Performer, performing artist, pedagogical worker, academic worker of a University;
- Scientific research or development worker, who is a participant of a scientific meeting;
- Scholar or student up to 26 years of age;
- Sportsman; or
- Person providing the delivery of goods or services within the territory of the Czech Republic, or delivers such goods, or provides installation, or provides a guarantee, or repair services, under a business agreement.

A work permit to employ non-EU country citizens in the Czech Republic is also not required for employing (accepting secondment of) a foreign national who was seconded (posted) to the Czech Republic within the framework of providing services by his/her employer residing in another EU Member State. However, there are special requirements to meet this criteria.

Residency in the Czech Republic

Temporary Residence Permit

This type of permit is issued to EU citizens, their family members and family members of Czech citizens.

Permanent Residence Permit

In general, this permit may be issued to a foreign national after five years of continuous legal stay in the territory of the Czech Republic. In some special circumstances (*e.g.*, asylum), it may be issued immediately and, in some special cases, after four years of continual stay in the territory of the Czech Republic (*e.g.*, international protection purposes).

Long Term Residence Permit

This type of permit is issued to a foreign national that has a Czech long term stay visa and is willing to stay in the Czech Republic for a period longer than one year, based on the assumption that the purpose of the stay will be the same for the entire period of stay.

For example, it may be issued for purposes of study in the Czech Republic, for purposes of being protected on the territory of the Czech Republic, scientific research, asylum and diplomatic purposes.

Other Comments

All Czech immigration procedures are time consuming and administratively demanding; therefore, advance planning is key. As an example, here is a summary of the key steps of the immigration procedure applicable to a non-EU country citizen intending to work in the territory of the Czech Republic, in an employment relationship with a local employer and the respective timeline in relation to the Czech work permit and visa:

- Preparation stage: 2-4 weeks to obtain all documentation.
- Notification of the Czech employer to the Labor Office on existence of unoccupied job - the period of the administrative proceeding is up to 30 days (usually taking the full 30 days);

- Application of the foreign employee to be employed by the Czech employer – The period of the administrative proceeding is up to 30 days (usually taking the full 30 days);
- Application of the individual (foreign employee) for short term employment visa – The period of the administrative proceeding is up to 30 days (usually taking approx. 7-15 days) – this document is not always necessary and depends on timing and circumstances;
- Application of the individual for long term employment visa and application for long term visa of family members – the period of the administrative proceeding is from 90-120 days (usually taking somewhere between 100-120 days); this can be filed with an existing work permit only.

Each step must be taken one by one, NOT simultaneously; except for steps Nos. 4 and 5 as Czech law makes it possible to apply for two different Czech working visas at the same time - a short term working visa and long-term working visa.

France

Executive Summary

France is a popular destination for holiday and business travelers alike. While brief visits generally pose no issue, coming to France to work or for longer stays means complying with a strict procedure with various authorities.

It is very important to apply for the appropriate visa in the foreign national's home country before coming to France. Personal appearance at the consular post is required in most cases.

Key Government Agencies

Visa applications are processed at French embassies and consular posts around the world.

The Labour Department ("Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi" or "DIRECCTE") countersigns employment contracts required for certain working visas.

Work permits required for long-stay visas are handled by a specific immigration office, the National Agency for the Reception of Foreign national and Migration ("Office Français de l'Immigration et de l'Intégration" or "OFII"), which approves files and sends them to the consular post for visa issuance.

Registration may also be required at the local Police department ("Commissariat de Police") located near the place of residence in France.

Current Trend

For 20 years, plans have been made to gather various aspects of immigration policy in one structure, which had been previously split up between the ministries of Interior, Foreign Affairs, Social Affairs and Justice. By an initiative of President Nicolas Sarkozy, a single ministry competent for immigration, integration, national identity and development partnership was created.

French immigration policy pursues four objectives: controlling migration flows; favoring integration; promoting the French identity; and encouraging development partnership.

In addition, France wishes to improve the system of immigration for professionals. Therefore, in response to recruitment needs in certain economic sectors, the French government has decided to encourage immigration for professionals and make it easier for foreign nationals to enter France for selected professions.

Business Travel

Short Term Visas (less than three months)

In general, and subject to the visa waiver described below, foreign national must, prior to coming to France even for a short visit, obtain a visa from the French Consulate in the country where they reside.

The applicant will apply for a Schengen visa, if the main destination is France. The Schengen visa allows entry to France and to move freely within other countries in the “Schengen space.”

Currently, the members of the Schengen space are the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

It is not possible for a holder of a Schengen visa to visit EU countries that are not members of the Schengen space.

The visa is granted for a maximum period of three months, and allows single or multiple entries. During the validity of the visa, the foreigner is authorized to stay in the Schengen space for the period indicated in the visa.

The application must provide a return ticket and evidence of sufficient resources for the stay in France (provided by the Town Hall).

The starting date for the authorized duration of stay is generally determined by the date stamped on the passport when crossing the border into France. In the absence of a stamp, the foreigner has the burden of proving the actual date of entry in to France (*e.g.*, showing travel ticket).

Visa Waiver

Visas are not required for EU (*i.e.*, twenty seven countries, Romania and Bulgaria benefiting from that specific status) and EEA (*i.e.*, Norway, Liechtenstein and Iceland) citizens to visit France.

In addition, the normal visa requirement is waived for trips of up to 3 months for citizens of the following countries: Andorra, Argentina, Australia, Bolivia, Brazil, Brunei, Canada, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, San Marino, Singapore, South Korea, United States, Uruguay, Vatican, and Venezuela. Also included are holders of passports from the Hong Kong Special Administrative Region of the People's Republic of China and the Special Administrative Region of Macao of the People's Republic of China, and holders of a valid residence document in France.

Training

Citizens of EU/EEA are able to live and work in France without a visa. Therefore, they are authorized to remain in France for training without securing a French visa.

Citizens of other countries must qualify for one of the visas set out below. In addition, non-EU/EEA citizens will generally be required to hold a valid work permit, which is obtained at the competent Préfecture in France after the visa is issued. A contract approved by the DIRECCTE is required for the visa application.

Short-stay Visa (“visa de court séjour”)

The Short-stay Visa can authorize training assignments for up to ninety days. No extension of stay is possible. Further, no more than ninety days can be spent in France during a six-month period. No further administrative steps are required at the French Préfecture.

Long-stay Temporary Duration Visa (“visa de long séjour pour durée temporaire”)

The Long-stay Temporary Duration Visa authorizes trainings for up to six months. No extension of stay is possible. No further administrative steps are required at the French Préfecture.

Long-stay Visa (“visa de long séjour”)

The Long-stay Visa authorizes foreign nationals to remain for periods longer than six months. Once in France, it is necessary to apply for a residency permit (“carte de séjour”).

However, as of June 1, 2009, the following categories of foreign national can obtain a Long-stay Visa equivalent to a one-year residence permit (no obligation to apply for a residence permit once in France) from the French Consulate:

- spouses of French citizens;
- visitors;
- employees having an employment contract approved by the DIRECCTE (fixed-term contract or indefinite-term contract; employees under the Intra-company Transferee classification do not benefit from this procedure – they must apply for residence permits); and
- students.

For the four above-mentioned categories of foreign national, the visa is generally valid for one year. If the foreign national wishes to stay longer than one year in France, then two months before the expiration date of the visa, a residence permit application must be filed at the Préfecture competent within the domicile.

Employment Assignments

Corporate Executive Visa

Corporate executives for visa purposes include: the President and/or Managing Director of a French corporation (“Société Anonyme” or SA), the President and/or the Managing Director of a simplified corporation (“Société par Actions Simplifiée” or SAS), the Managing Director (“Gérant”) of a French limited liability company (“Société à Responsabilité Limitée” or SARL) or the Managing Director (“Responsable en France”) of a branch or a liaison office.

Corporate executives are required to obtain a visa in order to both reside and hold the positions in France. Their visa is processed through the Trade and Foreign Affairs Department.

To hold the above position without residing in France, a non-EU national must still obtain a prior simplified authorization (“récépissé de déclaration”).

Employee Visa

Employee visas require first that the French employer file an application with the DIRECCTE. When approved, it is then processed by the OFII, who in turn will forward it to the French Consulate. The employee and family members will then be able to collect their Long-stay Visas from the French Consulate. This process can take approximately 4-6 weeks.

When the employee and family arrive in France, they must undergo a medical examination with the Immigration Office. If coming under the Regular Employee classification, the employee must also take French language lessons, if they are not fluent, and follow civic training.

Upon presentation to the Préfecture of the visa and evidence of their domicile in France, the employee and family will receive a provisional residence permit valid three months (“récépissé”) and then a one-year residence permit (“titre de séjour”). They may also directly obtain a one-year residence permit depending on the Préfecture involved. The employees under the Intra-company Transferee classification receive a three-year residence permit.

For the employee, the residence permit acts both as a residence and work permit.

In principle, the spouse is not allowed to work. However, under certain circumstances, in particular if the employee’s spouse entered France under the Intra-company Transferee classification, permission to obtain a work permit may be granted.

In addition to the residence permit, the seconded employees must obtain a work permit (“autorisation provisoire de travail”) from the DIRECCTE.

The one-year residence permit and the work permit when applicable are renewable. Such renewal must be requested two months prior to the expiration date.

Regular Employees

In principle, new immigrants are not allowed to arrive and work in France. However, a French employer may face difficulties in recruiting a local employee meeting the requirements for the position available. Consequently, the Labor authority, prior to the approval of such an application, must take into account the context of employment in France in the relevant sector. In order for the application to succeed, the employer should therefore characterize difficulties of employment in his/her sector.

In the event the employer finds a non-EU employee abroad who fulfils the conditions, such employer could be requested to obtain clearance from the National Employment Agency. This clearance is not a guarantee the work permit application will be approved.

Temporary assignments

Intra-company Transferee

The employees in this category (“salariés en mission”) are those who are working in a group and who are assigned by a foreign company of that group to a French company which is part of the group. The work permit applications must meet the following conditions:

- The employee has been working for the group for at least three months before the assignment in France;

- The monthly gross salary to be paid while working in France must exceed 1 and 1/2 the legal minimum salary (known as the SMIC), which currently for 2010 represents € 2,015 gross.

The above category includes two types of employees: the ones who become employees of the French company; and the others who, while working in France, remain employees of the foreign employer (“détachés”).

The employees will obtain a three-year residence permit renewable once. Such a permit enables the employees to work only in the defined position with the same employer.

Employee seconded in the framework of a service agreement

This category concerns employees temporarily seconded to France by their foreign employer to a third party company for the performance of specific services (*i.e.*, technical assistance) in the scope of a service agreement.

The secondment should not result in the employee’s effective involvement in the daily running of the French host company’s activity.

Other Comments

It is possible for non-EU nationals, after five years residency in France, to obtain a ten-year residence permit (“Carte de résident”), if they can prove that they have a regular business activity in France (*e.g.*, as corporate executive, regular employee or otherwise) from which they derive sufficient income and declare that they intend to reside in France for a long period or on a permanent basis.

The non-EU spouse of an EU employee working in France may be entitled to obtain a ten-year residence permit. In contrast, the non-EU

national who is a spouse of a French national can receive only a one-year residence permit, which is renewable once before obtaining the ten-year residence permit. Such a one-year residence permit allows the spouse to work as an employee.

The ten-year residence permit enables the holder to hold any position in France. This permit is renewable. The holder who is absent from France for up to 3 years may retain the benefit of such a permit.

Children of non-EU nationals residing in France must secure a residence permit (“titre de séjour”) after their eighteenth birthday for the same duration as the permit of their parents. Such residence permit does not allow the children to work.

Children of non-EU nationals born in a foreign country may secure a specific document known as “Document de Circulation pour Enfant Mineur” (“DCEM”).

Children of non-French nationals born in France may secure a specific document named “Titre d’Identité Républicain” (“TIR”).

These documents enable the child to prove his/her identity, to travel freely in France and to prove that he has a regular stay in France while traveling outside the country.

In case of change of address, a non-EU national who moves from one residence to another must notify the local Police department (“Commissariat de Police”) of the new residence.

French residents may be eligible to naturalize and become French citizens after continuously residing in France for 5 years. Residency during the five-year qualification period may be achieved by living in France under certain categories of valid residency (*e.g.*, visitor, student, regular employee or corporate executive).

Approval criteria includes assimilation into France (*i.e.*, knowledge of French, insertion into the French community), health (*e.g.*, absence of a chronic condition), morality (*i.e.*, no police record indicating an unlawful act in France or abroad), and an acceptable professional and financial profile.

Germany

Executive Summary

Many different kinds of people immigrate to Germany each year. The reasons for leaving their home countries vary, but most foreign nationals come for employment, business or tourist purposes. In order to enter and reside in Germany, any non-European Economic Area (“EEA”) national needs permission in the form of a residence permit for the purpose of the stay.

Key Government Agencies

Depending on their nationality and the purpose and length of their stay, foreign nationals may either require an entry clearance in the form of a visa or they may enter Germany without a visa and apply for a residence permit within Germany.

In case the foreign national is required to obtain a visa, the application is submitted to the German Embassy (“Botschaft”) or Consulate General (“Generalkonsulat”) at the place of residence abroad. Before issuing the visa, the German representation will involve the Aliens’ Office (“Ausländerbehörde”) responsible for the place of intended residence in Germany and the local Labor Agency (“Agentur für Arbeit”), if necessary, for approval. Such approval of the local Labor Agency is required for most work and employment activities that are carried out in Germany.

Foreign nationals from a privileged or semi-privileged country, which is party to a non-visa movement treaty signed by Germany, may enter Germany without an entry clearance and may submit the application to the local Aliens’ Office directly. As far as necessary, the Aliens’ Office will internally involve the Labor Agency as well.

The updated list of the (semi-) privileged countries can be found at www.auswaertiges-amt.de/diplo/en/WillkommeninD/EinreiseUndAufenthalt/StaatenlisteVisumpflicht.html.

Current Trends

According to the latest studies commissioned by the Federal Ministry of Economy, Germany is currently faced with a lack of qualified employees, which costs German business billions every year. In particular, there is a lack of skilled labor for such positions as technicians, as well as in the academic subjects of mathematics, information technology, natural science and technology. The Federal Government intends to deal with this deficit of specialists not only by a national campaign for better education, but also by considerably facilitating access to the German employment market for foreign specialists in the areas sought after.

Currently, the possibility exists for some occupational groups, as well as for highly specialized employees, to obtain a residence permit for employment purposes or even an unlimited settlement permit, without first having to go through the so-called “labor market check” by the Labor Agency.

Whilst until 2009, highly qualified specialists and managers with special occupational experience who intend to apply for a settlement permit had to earn at least double the contribution assessment ceiling of the statutory health insurance carrier (that is, currently at least EUR 90,000) annually. This income limit was decreased in 2009 to the contribution assessment ceiling (west) of the general pension insurance (at present EUR 66,000).

Citizens from the European Economic Area (EEA)

Citizens of EEA countries are, in general, free to reside and work in Germany without performing any prior formalities. Family members of an EEA-national (who are not themselves EEA-nationals) will be required to obtain an “EEA-Family Permit” to accompany or join an EEA-national who is exercising his/her rights to reside in Germany. EEA-nationals and their family members are free to work for a company or be self-employed without the need to obtain work authorization. The only obligation is to register their local address.

Besides Germany, the following countries belong to the EEA: Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

The Middle and East European countries (MOE countries) which entered the EU in May 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) and January 2007 (Bulgaria, Romania) are excluded from the right of freedom of domicile possibly for up to a maximum of 7 years as of the date of accession. They are, however, privileged in the respect that they do not need entry clearances (visas) and may apply for employment-related residence permits from within Germany.

According to treaties between Switzerland and the EU, Swiss nationals enjoy immigration rights equal to those of nationals from EEA countries as well.

Business Travel

Temporary Business Visitor

Except for nationals of non-privileged countries, business visitors are not required to obtain a visa or a residence permit if their stay does not exceed ninety days within a twelve-month period.

Anyone who enters Germany as a business visitor is expressly barred from taking employment and to do so is a criminal offence. A business visitor is defined as an individual who normally lives and works outside Germany and comes to Germany to transact business, attend meetings and briefings, for fact-finding, or to negotiate or conclude contracts with German businesses to buy goods or sell services. The visitor must not intend to produce goods or provide services within Germany.

Short Term Visa (Schengen Visa)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Germany and have, therefore, to apply for such visa at the German diplomatic post abroad.

A valid Schengen Business Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland) for a maximum period of three months within a six-month period.

Schengen Visas have to be applied for at the representation of the main destination of the intended travel or, in case a main destination cannot be ascertained, at the representation of the country of the first entry into the Schengen area.

Training

The German Immigration Act does not provide a specific visa category for foreign employees who want to receive on-the-job training in Germany. Training is considered as a kind of employment from the authorities' perspective, therefore trainees must apply for a residence permit for employment purposes. That being said, there may be some privileges for specific occupational groups, such as information technology specialists or for the case of an international personnel exchange.

Employment Assignments

For most work and employment activities that are carried out in Germany, a residence permit for employment purposes must be requested. This will only be granted with the approval of the Labor Agency. The residence permit for employment purposes allows a specifically designated foreign employee to carry out a specific job for a particular employer based in Germany. The residence permit will usually be limited to one year but can be extended if necessary. An unlimited settlement permit can be granted from the beginning only to highly qualified specialists or after five years of residency in Germany.

In most cases the Labor Agency will only approve an employment application in Germany under the condition that:

- No adequately trained or qualified German or EEA personnel is available for the vacancy in question. The Labor Agency can insist on a four-week waiting period during which they will try to find personnel with German or other EEA-countries citizenship, who can fill the position, before they grant the approval;
- the salary is comparable to that offered to resident workers in the same position; and

- the intended assignment (vacancy) is allowed to be filled by foreign nationals under the ordinance on employment of foreign nationals, which is a detailed catalogue of possible qualifying professions.

International Personnel Exchange Members

Specialists and skilled employees of an internationally operating group who are transferred temporarily to Germany may apply for their residence/work permit under simplified conditions provided that the intended assignment can be seen as part of a personnel exchange program for internationalization of the group. Furthermore, the assignment must be of crucial interest for the cooperation and development of the group or the company in the international market. It is essential that the employees are permanently employed by the company and that they possess a university diploma or similar education (or a minimum of five years employment with the company). Moreover, it is sufficient that, from time to time, the company also sends skilled employees from Germany to other countries. A work-related residence permit under this provision can be granted for up to three years.

The approval of an intended employment like this has to be granted by a special labor authority (“Zentralstelle für Arbeitsvermittlung” or “ZAV”) without a labor market check, which usually speeds up the visa process considerably.

Service Delivery

Approval from the Labor Agency is not required for non-EEA employees working for an EEA company that provides its services to customers within Germany, if they are employed at the company’s place of residence and if the assignment to Germany is temporary.

Senior Executives

No approval of the Labor Agency is required in case the foreign national is:

- Chief-Executive Officer with full power of attorney (“Generalvollmachta”) or “Prokura” as certified/verified by the German commercial register; or
- Member of the executive body of a legal entity (*e.g.*, Managing Director of a GmbH); or
- Partner and/or shareholder of trading or commercial companies with the power to represent the company.

Highly qualified Specialists

Highly qualified specialists may apply for a settlement permit that gives unlimited residence rights to them and their family members. Prior approval for the intended employment from the Labor Agency is not required in these cases. Highly qualified persons include:

- Scientists with special technical knowledge;
- Teaching or scientific personnel in prominent positions; and
- Specialists and executive personnel with outstanding professional experience who earn a salary corresponding to at least the earnings ceiling (west) of the general pension insurance (at present € 66,000).

Specific assignments

The following categories of visitors are exempt from the requirement of a residence permit for employment purposes, provided the foreign national retains residency abroad:

- Sportsmen and women who take part in official sport festivals (provided that the person has completed their sixteenth year and that the association or organization pays a gross salary which amounts to at least 50% of the contribution assessment ceiling for the statutory pension insurance and the sports qualification as professional athlete or the professional expertise as a trainer has been ascertained by the German sport association);\
- Artists who take part in art festivals or guest performances (for a temporary limitation of 90 days within a 12-month period);
- Pupils and students of foreign universities or vocational schools for a holiday job placed by the German Labor Agency (for a temporary limitation of 90 days within a 12-month period);
- Journalists, who are accepted by the German Press and Information Office (“Presse- und Informationsamt”) or who are only temporarily in Germany (for no longer than 90 days within a 12-month period);
- Trainers who are employees of a company whose business is in a country outside of Germany for the installment or setting up of a “ready-to-use” machine or a (computer) system delivered by their foreign company; for the provision of training for the use of such machine or system and the maintenance or repair thereof. An individual is only eligible for this exemption if it can be shown that the company has

sold a product or computer system that its employee shall implement in its customer office and that some installation or training is necessary (“trainer”). The exemption from the work authorization must be approved by the labor authorities.

Other Comments

There are privileges for additional groups (*e.g.*, for foreign students) who may stay in Germany for one year after the successful completion of their exams for the purpose of looking for work or for foreign nationals who come to Germany for mainly charitable or religious purposes.

Foreign nationals may apply for a settlement permit, which gives unlimited residence rights to the applicant and the family in case the foreign national has held a fixed-term residence permit for at least five years and fulfills further requirements (*e.g.*, proving maintenance, sufficient knowledge of the German language, *etc.*).

Spouses and dependent children may accompany the holder of a work-related residence permit. These family members may stay for the same period of time as the applicant. However, the applicant must provide evidence of the ability to financially support the family members during their period of stay in Germany. Generally, spouses and dependants of the applicant are not entitled to work during the first two years in Germany unless they have obtained a work-related residence permit in their own right. Family members of a settlement permit holder are allowed to work without restriction.

Foreign nationals who want to be naturalized to German citizenship must have been legally residing in Germany for at least eight years and must fulfill some other preconditions. Such naturalization generally requires that the foreign national be established in Germany (*i.e.*, able to sustain self and family without the help of welfare benefits or unemployment assistance), have no criminal record, and

possess adequate command of the German language. Furthermore, applicants are generally requested to give up their present citizenship. In this category, naturalization is generally not possible from abroad.

The same requirements apply in the case of a foreign national who is the spouse or legal partner of a German citizen that wants to become naturalized, provided that they have been married for two years and have been residing in Germany for three years.

Hong Kong Special Administrative Region

Executive Summary

On July 1, 1997, Hong Kong became a Special Administrative Region of the People's Republic of China ("PRC"). Although part of the PRC, Hong Kong continues to operate under a common law legal system that is distinct from other parts of the PRC.

Key Government Agencies

The Hong Kong Immigration Department ("HKID") is responsible for all immigration related matters. It monitors and controls the movement of people in and out of Hong Kong by land, sea, and air. The HKID is also responsible for processing applications for visas, right of abode (*i.e.*, permanent residency), naturalization, Hong Kong travel documents, Hong Kong identity cards, and registrations of births, deaths, and marriages for Hong Kong residents.

Business Travel

Visitor Visa

Foreign nationals who wish to travel to Hong Kong for tourism or business purposes may apply for visitor visas at an overseas PRC consulate or embassy.

Nationals of the following countries always require valid visas regardless of the purpose of the trip to Hong Kong, including those who are in transit and remain in the airport transit area: Angola**, Bangladesh**, Burundi**, Cameroon**, Democratic Republic of Congo, Republic of Congo**, Republic of Cote D'Ivoire, Eritrea, Ethiopia**, Ghana**, Iraq, Liberia, Nepal, Pakistan**, Sierra Leone,

Somalia, Sri Lanka**, and Togo** (**except for holders of Diplomatic and Official passports).

Nationals of the following countries require visas prior to entering Hong Kong, except in direct transit by air and when the individual does not leave the airport transit area: Afghanistan, Albania, Armenia, Azerbaijan, Belarus, Cambodia, the PRC, Cuba, Georgia, Grenada, Iran, Kazakhstan, Kyrgyzstan, Laos, Lebanon, Libya, Republic of Moldova, Republic of Montenegro, Myanmar, Nicaragua, Nigeria, North Korea, Palestine, Panama, Senegal, Republic of Serbia, Solomon Islands, Sudan, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam.

PRC nationals residing in Mainland China should apply for and secure appropriate entry permits through relevant Chinese authorities in Mainland China prior to traveling to Hong Kong. Mainland Chinese residents may apply through an authorized travel agent in the PRC to visit Hong Kong on group tours. Mainland Chinese residents from certain provinces may also directly apply through relevant Chinese authorities in the PRC to visit Hong Kong under the Individual Visit Scheme.

Alternatively, Mainland Chinese residents traveling on PRC passports who are in transit through Hong Kong to and from another country may be granted a stay of seven days without the need to obtain a prior entry visa/permit provided the usual immigration requirements are met, including possession of a valid entry visa for the destination country and a confirmed onward booking.

In addition, certain overseas PRC nationals holding PRC passports may be issued a multiple-journey visit entry permit valid for twenty four months and good for a stay of fourteen days upon each arrival. The overseas PRC nationals must be permanent residents or ordinarily resident for not less than one year in the country/territory (*e.g.*, United States) where the applications are lodged, have no previous adverse

records in Hong Kong, and possess ample returnability to and have a steady job or study in the country/territory of domicile.

The government’s regularly updated lists are published at:
www.immd.gov.hk/ehtml/hkvisas_4.htm.

All visitors are required to have adequate funds to cover the duration of the stay without working and to hold onward or return tickets.

A visitor may request a limited extension of stay in Hong Kong by applying in person at the HKID. A satisfactory explanation has to be given to the HKID before the extension of stay will be considered.

Visa Waiver

Citizens of certain countries do not need to obtain visas as tourists or business visitors if they are staying in Hong Kong for a limited period of time. Their permitted period of stay varies depending on their country of citizenship. Extensions of stay are considered on a case-by-case basis by the HKID. Citizens of the following countries are eligible for visa waiver and the period of stay shown below:

Contry	Duration of visit in days
Austria	90
Australia	90
Bulgaria	90
Canada	90
Finland	90

Contry	Duration of visit in days
France	90
Germany	90
Greece	90
India	14
Ireland	90
Italy	90
Japan	90
Netherlands	90
Philippines	14
Russian Federation	14
Singapore	90
Spain	90
Sweden	90
Switzerland	90
Thailand	30
United Kingdom	180

Contry	Duration of visit in days
United States	90

Non-Visitors

In General

A foreign national who wishes to enter Hong Kong, other than as a tourist or for business purposes, may consider applying for one of the following visas based on the eligibility criteria described below.

Please note that special guidelines apply to PRC nationals.

- Training;
- Employment;
- Employment (investment);
- Dependent;
- Capital investment; and
- Quality migrant.

Training

Training Visa

In general, training visas are granted to enable foreign nationals to acquire skills, knowledge, or experience that they may take to their respective home countries and make use of what they have learned at the conclusion of the training.

In reviewing training visa applications for company personnel traveling to Hong Kong for training purposes, the HKID will consider the nature and importance of the training program. Training visas may be issued for the period of training or a maximum of twelve months, whichever is shorter. Training visas may also be issued to foreign students pursuing their undergraduate degree studies or above from overseas, provided the training in Hong Kong is relevant to their studies.

This visa category does not apply to nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal, and Vietnam. Training visas for PRC nationals residing in Mainland China are discussed below.

Employment Assignments

An employment visa is required for a foreign national to work in Hong Kong, regardless of whether the foreign national is paid or unpaid for services rendered in Hong Kong, regardless of the locality of the employer, and regardless of the duration of the employment in Hong Kong. Failure to do so is an offence under the Hong Kong Immigration Ordinance.

The HKID processes each employment visa application on its own merits and typically considers the following three main issues:

- Whether the business sponsoring the employment visa is beneficial to the economy, industry, and trade of Hong Kong;
- Whether the foreign national's services are essential to such business; and
- Whether the position may be easily filled by someone locally in Hong Kong.

It is important to show that the foreign national possesses skills, knowledge, and experience that are not readily available or are in shortage in Hong Kong. It could be because the foreign national:

- Is a very highly qualified professional;
- Possesses technical knowledge or know-how indispensable to the company in Hong Kong;
- Possesses acclaimed experience and relevant knowledge; or
- Generally, the proposed stay in Hong Kong will benefit not only the company, but also Hong Kong.

To make this demonstration, the foreign national should possess a bachelor's degree and some work experience in a related field, or, where a bachelor's degree is lacking, significant work experience in a related field. In the case of an intra-company transfer, it is generally sufficient to show that the foreign national acquired knowledge of the internal administration and operation of the company during employment with the company abroad and that this type of knowledge is not readily available locally in Hong Kong.

Extensions of the employment visa are available. The renewal pattern is 2 years, 2 years, and 3 years.

The employment visa is employer specific. A foreign national granted an employment visa is authorized only to work for the sponsoring employer in Hong Kong. If the foreign national leaves the employer in Hong Kong, notwithstanding the fact that the visa has not expired or has lapsed, the foreign national may not take up employment with another employer in Hong Kong unless prior approval is obtained from the HKID.

If an employment visa holder is required to perform work for an entity in addition to the approved employer, the foreign national must first obtain side-line approval from the HKID. This requirement is noteworthy in cases where a foreign national may be required to supervise or engage in activities for several related companies in Hong Kong.

Upon termination, the sponsor in Hong Kong must inform the HKID. The sponsor may be required to bear the cost of the foreign national's repatriation.

This visa category is not available to nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal, and Vietnam. Employment visas for PRC nationals residing in Mainland China are discussed below.

Employment Visa under the Immigration Arrangements for Non-local Graduates ("IANG")

Foreign nationals and PRC nationals who have completed their full-time and locally-accredited programme in Hong Kong (*e.g.*, bachelor's degree or higher level studies) may remain or re-enter Hong Kong for employment after graduation.

Foreign nationals who wish to remain and work in Hong Kong after graduation may submit their employment visa application to the HKID without first securing an offer of employment. Foreign nationals who wish to re-enter and work in Hong Kong after graduation are required to secure an offer of employment at the time of application.

Foreign nationals who have obtained their employment visa under the IANG are free to take up and change employment during their permitted stay without the need to seek prior approval from the HKID.

This visa category does not apply to nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal, and Vietnam.

Employment (Investment) Visa

A foreign national investing and starting a business may apply for an employment (investment) visa. The investment amount must be "substantial," which generally means a minimum of HK\$500,000, depending on the proposed business venture. The business must be beneficial to the local economy, commerce, and industry of Hong Kong, usually shown by the creation of jobs. Further, it is important to show that the foreign national has the expertise to carry on the business.

This entry arrangement does not apply to PRC nationals residing in Mainland China and nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal, and Vietnam.

Dependent Visa

Foreign nationals not subject to a limit of stay in Hong Kong (*i.e.*, foreign nationals who are Hong Kong permanent residents, residents with the right to land, or on unconditional stay), may sponsor their spouse, unmarried dependent children under the age of eighteen, and dependent parents aged sixty and above to take up residence in Hong Kong as their dependents. Foreign nationals admitted to Hong Kong to take up employment, or study in full-time undergraduate or post-graduate programs in local degree-awarding institutions, capital investment entrants, or as quality migrants, may sponsor their spouse and unmarried children under the age of eighteen for dependent visas.

Dependent visa holders are free to study and take up employment in Hong Kong without the need to apply for separate visas, so long as

their principal sponsors maintain their employment status with the sponsoring companies in Hong Kong, or if their sponsors are not subject to a limit of stay in Hong Kong. Those with dependent visas issued before May 15, 2006 and bearing the condition “Employment is not permitted” may remove the condition by submitting applications to the HKID. The condition will be automatically removed when the dependent visa holder’s current visa expires and they are granted an extension of stay.

Common law and same sex spouses are not entitled to dependent visas but may be able to obtain prolonged visitor visas. The success of a prolonged visitor’s visa application is at the sole discretion of the HKID.

This visa category does not apply to nationals of Afghanistan, Albania, Cuba, and Korea (Democratic People’s Republic of).

Capital Investment Entrant Scheme

Foreign nationals who have sufficient assets to invest in Hong Kong may be eligible for a visa under the Capital Investment Entrant Scheme (“CIES”), which does not require employment in Hong Kong. Foreign nationals may be eligible if they:

- Have net assets or net equity with a market value of not less than HK\$6.5 million to which they are absolutely beneficially entitled throughout the 2 years preceding the application; and
- Make the HK\$6.5 million investment in permissible assets within 6 months of application lodgment, or within 6 months after obtaining the approval-in-principle from the HKID.

CIES currently applies to foreign nationals (except nationals of Afghanistan, Albania, Cuba, and the Democratic People’s Republic of Korea), Macao and Taiwan residents, PRC nationals who have

obtained permanent resident status in an acceptable foreign country, and stateless persons who have obtained permanent resident status in an acceptable foreign country with proven re-entry facilities.

The foreign national is not allowed to realize or cash in any capital appreciation of the qualifying portfolio during the stay in Hong Kong. If the value of the portfolio falls below the original level of HK\$6.5 million, no topping up is required.

Quality Migrant Visa

The Quality Migrant Admission Scheme is available for highly skilled or talented persons. Applicants need not secure an offer of employment prior to application. There are two types of points-based assessments: General Points Test and Achievement-based Points Test.

The General Points Test allocates marks according to the following five factors:

Factors	Maximum Points
Age	30
Academic / Professional Qualifications	45
Work Experience	50
Language Proficiency in Chinese and English	20
Family Background	20
Total Points	165

Applicants must achieve above a minimum mark set by the HKID. The minimum mark is subject to change.

The Achievement-based Points Test is for individuals with exceptional talent or skills, requiring receipt of awards of exceptional achievement (*e.g.*, Olympic medals, Nobel prize) or by showing work recognized by industry peers or significant contribution to the development of the individual's field (*e.g.*, lifetime achievement award from an industry). Applicants must obtain the maximum mark of one hundred sixty five or face refusal.

High-scoring applicants assessed under either the General Points Test or Achievement-based Points Test will be short-listed for further selection by the Director of Immigration. Applicants who are allotted a place in the scheme quota will be issued with an approval-in-principle letter and will be required to attend an interview in person at the HKID in Hong Kong for verification of supporting documents. Upon a satisfactory verification, applicants will receive formal approval and will normally be issued an entry visa or permit for an initial stay of twelve months in Hong Kong. Visas issued under the scheme may generally be renewed provided applicants take steps to settle in and make contributions to Hong Kong.

Nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, the Democratic People's Republic of Korea, Nepal, and Vietnam are excluded from the Quality Migrant Admission Scheme.

Mainland PRC Nationals

Despite Hong Kong's reversion to the PRC in 1997, the entry of Mainland PRC nationals into Hong Kong remains restrictive. For example, a PRC national residing in Mainland China traveling to Hong Kong from China as a visitor or resident is required to carry an

Exit-entry Permit for Traveling to Hong Kong and Macao (“EEP”) with the appropriate exit endorsement issued by the Public Security Bureau (“PSB”) in Mainland China. Restrictions on the use of available visa categories by PRC nationals are noted in the sections above.

Employment and training visa applications for PRC nationals, however, are evaluated under the Admission Scheme for Mainland Talents and Professionals (“Admission Scheme”). The eligibility criteria for these visa categories as described above are applied quite strictly under the Admission Scheme. The Admission Scheme is quota-free and non-sector specific. Document requirements for PRC nationals will be more extensive than for foreign nationals.

The sponsoring entity should submit the application directly to the HKID on behalf of the PRC national. Upon application approval, the HKID will issue an entry permit to the sponsoring entity for forwarding to the PRC national. The PRC national should present the entry permit to the PSB in Mainland China and apply for an EEP and a relevant exit endorsement before traveling to Hong Kong.

Hong Kong Identity Card

Once a foreign national (including a PRC national) has secured the appropriate visa, registration for a Hong Kong identity card with the Registration of Persons Office is required if the foreign national will reside continuously in Hong Kong for more than 180 days. Hong Kong residents aged eleven and above must register for a Hong Kong identity card. Hong Kong residents aged fifteen or above must carry at all times a Hong Kong identity card. Failure to do so is an offence under the Immigration Ordinance.

Other Comments

Foreign nationals may be eligible to apply for right of abode after continuously residing in Hong Kong for 7 years or more.

Naturalization to become a PRC national is also possible for those willing to abide by the PRC constitution and laws, if they are near relatives of Chinese nationals, have settled in the PRC, or have other legitimate reasons. The PRC does not recognize dual nationality, and applicants must relinquish foreign citizenship.

Hungary

Executive Summary

Hungarian immigration legislation provides different solutions to help employers of foreign nationals and to assist foreign citizens entering the country for business purposes. Usually, there are several possible solutions for entry and stay in Hungary that are worth considering during the planning phase of the Hungarian residence.

Hungarian immigration law also provides various exemptions to simplify the residence and employment of foreign nationals who are executive employees of Hungarian entities, or international companies sent to Hungary on secondment, scientific researchers, students, etc. As a result of this, foreign nationals can easily choose the form of their residence and employment in Hungary that fits as close as possible to their expectations and needs.

Key Government Agencies

Depending on their nationality as well as the purpose and length of their stay in Hungary, foreign nationals may either require an entry permission, by obtaining a specific visa or residence permit, or they may enter the territory of Hungary without any visa.

If the foreign national is required to obtain a visa, the application must be processed in accordance with the Visa Code regulation adopted by the European Parliament and the Council in July 2009 entered into force (“Visa Code”). This regulation aims to include the European legislation on visa matters into a unified document and, thus, to increase transparency, enhance the rule of law and the equal treatment of visa applicants and to harmonize the rules and practice of Schengen countries where the common visa policy is applicable.

The Visa Code involves all the currently effective provisions applicable to the Schengen visa. It defines the common rules on the conditions and procedure of issuing a visa as well as the general rules. The Visa Code also harmonizes the rules on processing applications and orders.

Pursuant to the Visa Code the visa application must be submitted generally to the Hungarian Embassy (in Hungarian: “Nagykövetség”) or Consulate (in Hungarian: “Konzulátus”) at the place of residence abroad, unless the visa application may also be processed by various forms of cooperation of member states, such as limited representation, co-location, common application centers, recourse to honorary consuls and cooperation with external service providers. The application for residence permit is forwarded to the regional office of the Office of Immigration and Nationality (in Hungarian: “Bevándorlási és Állampolgársági Hivatal”) which is authorized to issue such permits in Hungary.

The issuance of the visa or the residence permit is only a preliminary requirement for entry; however, it does not ensure an automatic entry for foreign nationals. At the Hungarian border, third country nationals must establish border guard officer that specific requirements set out in the 562/2006/EC regulation are met (*i.e.* valid passport and visa, justify the purpose of their stay, the cost of their living in Hungary is covered by sufficient financial resources, they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry; they are not considered to be a threat to public policy, internal security, public health or the international relations of any Hungarian).

If gainful activity is the purpose of foreign national’s entry into Hungary, a work permit must be obtained and attached to the application for visa, provided that the performance of said gainful activity does not require a work permit. The work permit is issued by the regional office of the Public Employment Service (in Hungarian: “Állami Foglalkoztatási Szolgálat”) in Hungary. Usually no work

permit is required if the foreign national is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation.

Current Trends

Foreign nationals from a privileged or semi-privileged country, for which the European Community has abolished or simplified the visa requirement, may enter Hungary without a visa and may submit the application for residence permit to the regional office of the Office of Immigration and Nationality directly.

Simultaneously with the European integration, Hungary developed a unified immigration system of regional immigration offices that are responsible for immigration issues of any kind. Hungary joined the EU on May 1, 2004 and became a party to the Schengen Treaty effective as of December 31, 2007. These milestones of Hungary's integration had substantial impact on the Hungarian immigration law, because the applicable law has been harmonized with the EU law and the specific provisions applicable for EEA citizens has been introduced to the Hungarian legal system.

Hungary has developed extensive business and commercial relations within Europe, as well as to Asia and the overseas in the last two decades. As a consequence of this, there is a significant demand on flexible immigration rules that decrease the bureaucratic burdens for business travelers as well as foreign nationals who are employed by Hungarian entities or international corporations, but sent to Hungary for work.

Although, in the case of short-term stay in Hungary foreign nationals from non-privileged countries are still obliged to obtain a visa, the visa is issued within fifteen calendar days. This period may be extended to 30 calendar days when further scrutiny of the application is necessary, or in cases where diplomatic delegation processes the

visa application and certain authorities of Hungary are consulted. In exceptional situations, where additional documentation is necessary in, the period may be extended to a maximum of 60 calendar days.

For long-term residence in Hungary, non-EEA nationals are required to obtain a residence permit. The immigration law provides various categories of the residence permit depending on the purpose of stay in Hungary (*e.g.*, performing work, studying, family reunification, scientific research, visiting, healthcare, performing voluntary activities), therefore, applicants can easily choose a category that fits to their stay in Hungary. In addition, the applicable law also provides specific provisions on foreign nationals who intend to work seasonal or whose residence is related to the care or study of the Hungarian language, culture, or family relations except for the case of family reunification.

Simultaneously, with the increased number of foreign nationals employed in Hungary, there is a significant growth in the number of foreign nationals employed illegally. In the scheme of the fight against illegal employment, the applicable law has been amended to enhance the rigor of the immigration rules and consequently, the employers of foreign nationals are increasingly subjected to penalties and other sanctions in Hungary for unauthorized employment.

Citizens from the European Economic Area (EEA)

Citizens of EEA countries are, in general, free to reside and work in Hungary without performing any prior formalities. Family members of an EEA-national (who are not themselves EEA-nationals) will be required to obtain an “EEA-Family Permit” to accompany or join an EEA-national who is exercising his/her rights to reside in Hungary. EEA-nationals and their family members are free to work for a company or be self-employed without the need to obtain work authorization. If the EEA nationals stay for longer than three months, they are required to notify the competent regional office of the Office

of Immigration and Nationality about their residence in Hungary at latest on the ninety third day of their stay in Hungary and the competent office will issue a registration card certifying the notification.

Besides Hungary, the following countries belong to the EEA: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Iceland, Ireland, Italy, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

According to treaties between Switzerland and the EU, Swiss nationals enjoy immigration rights equal to those of nationals from EEA countries as well.

EEA citizens and family members who have resided legally and continuously within the territory of Hungary for five years have the right of permanent residence. However, in certain cases, less than five years residence is required for EEA citizens who have been residing in Hungary with the purpose of gainful activity (*e.g.*, more than three years is required, if the EEA citizen performing a gainful activity is entitled to receive pension upon termination of his/her employment). The right of permanent residency must be terminated if such EEA citizen spends more than two years outside of Hungary or if such EEA citizen is subject to residence restriction in Hungary.

Business Travel

Short Term Visa (Schengen Visa)

Nationals from non-privileged countries are required to obtain a visa for the duration of their business trip to Hungary and have, therefore, to apply for such visa at the Hungarian diplomatic post abroad.

A valid Schengen Visa entitles the holder to travel through and stay in the member countries of the Schengen Agreement (Germany, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden) for a maximum period of three months within a six-month period.

Schengen Visas have to be applied for at the representation of the country being the main destination of the intended travel or, in case a main destination cannot be ascertained, at the representation of the country of the first entry into the Schengen area.

Long-Term Visa

Foreign nationals may enter and stay in Hungary for a period exceeding three months if they meet the specific requirements (*e.g.*, justify the purpose of their stay, have sufficient financial resources to cover their healthcare services and similar) included in the Third-Country Nationals Act.

The applicable law distinguishes between the following type of visas and permits:

- a visa for a longer period than three months (*i.e.*, a visa for acquiring the residence permit; a seasonal employment visa, for single or multiple entry and for the purpose of employment for a period of a minimum of three months but no longer than six months; or a national visa may be issued under specific international agreement, for single or multiple entry and for a period of longer than three months);
- a residence permit;
- an immigration permit;

- a permit for settling down;
- an interim permit for settling down;
- a national permit for settling down; or
- an EC permit for settling down.

Residence Permit

Based on the residence permit a foreign national is entitled to stay longer than three months, however such permit can only be obtained for two years and occasionally be extended for an additional two years. If the purpose of the stay is the performance of work, the residence permit at the first occasion may be issued for a maximum period of 3 years, but later it may be extended for an additional three years. However, if the foreign national intends to perform an activity which requires a work permit, the validity period of the residence permit must be identical to the validity period of the work permit. In addition to the gainful activities, under specific circumstances, a residence permit may be issued for the purpose of family reunification, studying, scientific research, *etc.*

Settlement permit

The applicable law specifies three types of settlement permit: (i) an interim settlement permit; (ii) a national settlement permit; and (iii) an EC settlement permit. However, the Third-Country Nationals Act also acknowledges the settlement permits which were issued prior to the Third-Country Nationals Act coming into force.

A third-country national intending to settle down in Hungary may obtain (i) an interim settlement permit, (ii) a national settlement permit or (iii) an EC settlement permit, if specific requirements are satisfied (*e.g.*, expenses related to the third-country national's living

and accommodation in Hungary is covered or similar) of the Third-Country Nationals Act.

A third-country national, holding an EC settlement permit granted by an EU Member State in accordance with Council Directive 2003/109/EC of November 25, 2003, can obtain an interim settlement permit, if the purpose to stay in Hungary is to: (i) work, except seasonal employment; (ii) engage in studies or vocational training; or (iii) other certified reason. Such permit can be obtained for five years, but occasionally it can be extended for another five years.

A national settlement permit may be issued to third-country nationals holding a residence visa or a residence permit or an interim settlement permit and the particular person satisfies the specific requirements included in the Third-Country Nationals Act.

An EC permit for settling down may be issued to a third-country national, after living legally at least for five years in Hungary prior to the filing of the application.

Spouses and children

Hungarian immigration law provides specific provisions on the residence permit and work permit of spouses and other close relatives of foreign nationals holding a residence permit, a settlement permit or other valid long-term visa. These specific provisions aim to facilitate the cohabitation of families during the residence in Hungary.

Training

There is no visa category exclusively for training. Training is considered either (i) as a kind of employment; or (ii) if the foreign employees only attend lectures and classes in the scheme of the training, as a kind of visit from the authorities' perspective. In light of

this, trainees must apply for a residence permit for gainful activities or visiting purposes.

Employment Assignments

EU nationals are not required to obtain a work permit or visa to stay or work in Hungary. They are subject to registration requirement only. Similar treatment applies to citizens of Norway, Lichtenstein, Iceland, and Switzerland. However, the employer is required to notify - not later than on the commencement date of the employment - the competent labour center concerning the employment of an EEA nationals without a work permit, furthermore, the employer must also notify the labour center on the termination of such employment.

Other foreigners may be employed, provided that they have been granted a work permit and a residence permit.

As a general rule a work permit must be obtained if a foreign national would like to perform work in Hungary within the framework of an employment relationship. A work permit is also necessary if a foreign individual who is employed by a foreign company performs work in Hungary on secondment.

A work permit is issued by the labour center having competence over the area where the place of work in Hungary is located. The Hungarian entity for which the foreign employee will work must apply to obtain a work permit. The law technically requires that the work permit be issued or denied within ten working days following the submission of an application including the above listed documents; however, the applicable law provides that in certain cases the statutory period is two working days. If issued, the work permit will be valid for two years.

The competent labour center will issue the work permit if the documentation referred to above satisfies the legal requirements and if:

- the employer, prior to the submission of an application for a work permit, filed a valid manpower request in respect of the position to be taken by the potential foreign employee;
- after the labour center receives the employer's manpower request it examines the unemployment database to determine whether there are any unemployed workers who might be able to fill the position. If no Hungarian employee, or citizen of the European Economic Area or the relative thereof having the qualifications prescribed by law or requested by the employer for the relevant position, has been directed by the labor authorities to the employer; and
- the potential foreign employee has the qualifications prescribed by law or requested by the employer for the relevant position.

The employer's manpower request qualifies as a "valid manpower request" if it is filed with the labor center at least 15 days, but maximum 60 days earlier, or it was filed earlier than 60 days, but the manpower request was renewed after 60 days and the most recent renewal took place not later than 60 days, prior to the employer's submission of a work permit application. The work permit request is rejected if the employer does not intend to commence the applicant's employment within 120 days following the date on which the work permit request has been submitted.

Under certain circumstances the work permit may be issued in a simplified procedure, without examining the conditions set out above. Among others, the following circumstances may give rise to simplified procedure:

- if one or more foreign firms (or persons) have majority ownership interest in the company applying for work permit, provided that the total number of foreigners to be employed by the applicant in one calendar year does not exceed 5% of the total work force of the company as of December 31 of the immediately preceding year; or
- if the applicant, pursuant to an agreement concluded between the applicant and a foreign entity, intends to employ a foreigner for installation work, or to provide guarantee, maintenance or warranty related activities for more than fifteen consecutive working days (however, no work permit is required at all, if the foreigner nationals are to be employed by the applicant for less than fifteen consecutive working days occasionally).

Exceptions

Without providing an exhausting listing of each category exempted from the requirement of the work permit, we summarize below those categories that are relevant for business travelers and foreign nationals sent by multinational corporations for the performance of work in Hungary.

No work permit is required for the performance of work by a foreign national:

- who is an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation;
- who is the head of the branch of representative office of an enterprise having its registered seat abroad based on international treaties;

- who performs work related to the installation, warranty and other repairing activities based on a contract concluded with a foreign enterprise, provided that such activity does not exceed fifteen working days per occasion;
- who performs work science, education or art related work for a period of no more than 5 working days per calendar year.

Spouses and children

Similar to the residence permit, special provisions apply for family members in the field of the work permit. There is no need to examine the labour market by the local office of the Public Employment Service, if the spouse of a foreign national living together at least for one year in Hungary, or a close relative of a foreign national employed at least for eight years in Hungary living together with the said foreign national at least for five years in Hungary apply for a work permit.

Other Comments

There are additional authorizations that may apply to the specific cases such as work permit exception and residence authorizations that apply to professors or other university lecturers as well as researchers performing research or educational activities; students sent to Hungary by international student organizations for vocational trainings; sportspeople; students with Hungarian student card for performing work in Hungary; foreign nationals employed in Hungary in the scheme of the Leonardo da Vinci program of the EU; or the reunification of families.

The issuance of visas is a discretionary decision. Furthermore, the authorities have the power to deny those petitions without the opportunity to appeal the decision; however, the applicant may submit a complaint to the head of the Embassy or Consulate, if they complain

the process of rejecting their visa application. The applicant may appeal within five working days, if his/her application for residence permit was rejected. Since the duration of the general application process is thirty days, the best practice is to visit the consulate or contact the immigration authorities in order to clarify any issues that may arise in connection with the application. This can prevent the applicants from the rejection of their application due to formal or material deficiencies of the application documents.

Republic of Indonesia

Executive Summary

Indonesian law offers several visas to allow foreign nationals to enter for business purposes. For working in Indonesia, however, foreign nationals generally must be sponsored by an Indonesian entity to allow them to enter Indonesia using a Limited Stay Visa. The sponsoring entity also needs to obtain a work permit.

Key Government Agencies

The Immigration Attaché at an Embassy or Consular Office of the Republic of Indonesia or other designated official such as a Visa Officer is authorized to issue or refuse requests for Visit Visas and Limited Stay Visas.

Visa issuance must be in accordance with the decision of the Director General of Immigration (“DGI”) on behalf of the Minister of Law and Human Rights (“*Kementerian Hukum dan Hak Asasi Manusia*” or “*MOLHR*”). The DGI may fully authorize the Visa Officer to issue or reject applications for Visit Visas.

The Ministry of Manpower and Transmigration (“*Kementerian Tenaga Kerja Dan Transmigrasi*” or “MOMT”) processes applications for work permits.

Admission to Indonesia remains under the authority of the Immigration Officer at the port of entry. A Visit Visa may be issued at an immigration check point.

Business Travel

Foreign nationals coming to Indonesia for business trips may use a Visit Visa (Single Entry or Multiple Entry), a Visit Visa on Arrival or a Non-Visa Short Term Visit facility.

Visit Visa (Single Entry or Multiple Entry)

A Visit Visa is provided for non-working purposes including all aspects related to governmental duties, tourism, socio-cultural visits, business visits (but not for working) with a stay of sixty days at the maximum for the Single Entry Visit Visa. Multiple Entry Visit visas can be granted if the activities concerned require several visits to Indonesia, with a maximum validity period of 1 year and with a stay of no longer than sixty days for each visit. Examples of activities permissible for a holder of a Visit Visa are:

- Visit in relation to a cooperation between the Government of Indonesia and another Government;
- Tourism;
- Family or social;
- Inter educational institutions;
- Participating in a short training;
- Carrying out journalism activities that have received a permit from the competent institution (not applicable for multiple Visit Visa);
- Making a non-commercial film that has received a permit from the competent institution (not applicable for multiple Visit Visa);

- Conducting business discussions, such as sale and purchase of goods and services, and quality control of production;
- Giving lectures (seminar) or joining non-commercial seminars related to social, culture or governmental matters, that has received a permit from the competent institution;
- Participating in a non-commercial international exhibition (not applicable for multiple Visit Visa); or
- Attending meetings with headquarters or the representative in Indonesia.

Non-Visa Short Term Visit

Citizens of Thailand, Malaysia, Singapore, Brunei Darussalam, Philippines, HongKong SAR, Macau SAR, Chile, Morocco, Peru, Vietnam and Ecuador are entitled to enter Indonesia on Non-Visa Short Term Visits. This status can be used for the purpose of tourism, socio-cultural visits, business visits (but not for working) and government duties. It can be used for a stay period of thirty days at the maximum.

This visa cannot be extended or converted to other types of visa. The regulations on Non-Visa Short Term Visits do not list examples of activities allowed to be performed by a Non-Visa Short Term visitor. However, it is generally accepted that the type of activities that can be performed by this kind of visitor are the same as those of the holder of a Visit Visa.

Visa Waiver

Visit Visa on Arrival

Citizens of sixty four countries may also obtain a Visit Visa on Arrival to enter Indonesia. The Visit Visa on Arrival is provided for the purpose of tourism, socio-cultural visits, business visits (but not for working) or governmental duties and will be given on arrival in Indonesia with a stay period of 30 days, which can be extended for another 30 days with approval from the Director General of Immigration. The Visit Visa on Arrival can be given at the determined Special Economy Area.

The types of activities that can be performed under Visit Visa on Arrival are theoretically the same as those of a Visit Visa.

Citizens of the following countries are presently qualified under this program: South Africa, Algeria, United States of America, Argentina, Australia, Austria, Bahrain, Belgium, The Netherlands, Brazil, Bulgaria, Czech Republic, Cyprus, Denmark, the United Arab Emirates, Estonia, Fiji, Finland, Hungary, India, England, Iran, Ireland, Iceland, Italy, Japan, Germany, Cambodia, Canada, South Korea, Kuwait, Laos, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, Mexico, Egypt, Monaco, Norway, Oman, Panama, France, Poland, Portugal, Qatar, People's Republic of China, Romania, Russia, Saudi Arabia, New Zealand, Slovakia, Slovenia, Spain, Suriname, Sweden, Switzerland, Taiwan, Timor Leste, Tunisia, and Greece.

Visit Visa on Arrival is only available at major international gateways and seaports in Indonesia. The seaports are: Sekupang, Citra Tritunas (Harbour Bay), Nongsa, Marina Teluk Senimba, and Batam Centre in Batam (Riau Islands); Bandar Bintan Telani Lagoi and Bandar Seri Udana Lobam in Tanjung Uban (Riau Islands); Sri Bintan Pura in Tanjung Pinang (Riau Islands); Tanjung Balai Karimun (Riau Islands); Belawan (North Sumatera); Sibolga (North Sumatra); Yos

Sudarso in Dumai (Riau); Teluk Bayur in Padang (West Sumatra); Tanjung Priok in Jakarta; Tanjung Mas in Semarang (Central Java); Padang Bai in Karangasem (Bali); Benoa in Badung (Bali); Bitung (North Sulawesi); Soekarno-Hatta in Makassar (South Sulawesi); Pare-pare (South Sulawesi); Maumere (East Nusa Tenggara); Tenau in Kupang (East Nusa Tenggara); and Jayapura (Papua);

The airports are: Sultan Iskandar Muda in Banda Aceh (Nanggroe Aceh Darussalam); Polonia in Medan (North Sumatra); Sultan Syarif Kasim II in Pekanbaru (Riau); Hang Nadim in Batam (Riau Islands); Minangkabau in Padang (West Sumatra); Sultan Mahmud Badaruddin II in Palembang (South Sumatera); Soekarno-Hatta in Jakarta; Halim Perdana Kusuma in Jakarta; Husein Sastranegara in Bandung (West Java); Adisutjipto in Yogyakarta; Ahmad Yani in Semarang (Central Java); Adi Sumarmo in Surakarta (Central Java); Juanda in Surabaya (East Java); Supadio in Pontianak (West Kalimantan); Sepinggan in Balikpapan (East Kalimantan); Sam Ratulangi in Manado (North Sulawesi); Hasanuddin in Makassar (South Sulawesi); Ngurah Rai in Denpasar (Bali); Selaparang in Mataram (Wet Nusa Tenggara); and El Tari in Kupang (East Nusa Tenggara).

Visa on Arrival is also available at the land point of entry at Entikong (West Kalimantan).

Training

As noted above, Visit Visa and Visit Visa on Arrival allow foreign nationals to enter into Indonesia to participate in short-term trainings. However, it is not advisable for participants of on-the-job training to enter Indonesia using a Visit Visa or Visit Visa on Arrival, if they will receive remuneration/wages from the Indonesian entity conducting the on-the-job training or if the length of the training is relatively long (*e.g.*, more than three months). Limited Stay Visa should be obtained for that purpose and the Indonesian entity carrying out the on-the-job

training should also arrange a work permit for the foreign national participants.

Employment Assignments

Work Permit

Indonesian law requires any employer intending to employ foreigners to obtain a written permit (“*Izin Mempekerjakan Tenaga Kerja Asing*” or “IMTA”) from the MOMT. Employers who fail to obtain an IMTA for employing a foreigner may be subject to a criminal sanction of imprisonment for a minimum of 1 year and a maximum of 4 years and/or a fine of a minimum of Rp.100,000,000 and a maximum of Rp.400,000,000.

The process to obtain an IMTA begins with an application by the sponsoring, Indonesian entity at the MOMT for the approval of the Foreign Manpower Utilization Plan (“*Rencana Penggunaan Tenaga Kerja Asing*” or “RPTKA”).

Once the RPTKA approval is obtained, the Indonesian sponsoring entity must submit an application for a recommendation letter for visa application for working purposes, known as “TA.01 Recommendation.”

TA.01 Recommendation is issued by the MOMT to the DGI. Based on the TA.01 Recommendation, DGI will then issue a pre-approval for the Limited Stay Visa (“Telex VITAS”).

The foreigner can then proceed to obtain the Limited Stay Visa (*Visa Tinggal Terbatas* or “VITAS”) by submitting an application to the relevant Indonesian Embassy. The VITAS is valid for up to 90 days during which time the foreigner must enter Indonesia. If the initial entry is not made within the 90-days period, the pre-approval process must be re-filed.

After the issuance of the Telex VITAS, the Indonesian sponsoring entity can apply for the IMTA. At this stage, the Indonesian sponsoring entity is required to pay the Expertise and Skill Development Fund (*Dana Pengembangan Keahlian dan Keterampilan* or “DPKK”) amounting to US\$100 per month (payable in advance). If the foreigner will work in Indonesia for one year, the amount of DPKK to be paid is US\$1,200. The payment is made to the account of the MOMT through the bank nominated by the MOMT.

The foreigner does not need to be in Indonesia during the above process.

The accompanying spouse and children up to 17 years old may also enter Indonesia by applying for their respective VITAS. Dependent family members are only entitled to stay with the working spouse parent - this VITAS is not entitled them to work. If a spouse would also like to work in Indonesia, the spouse will also need to be sponsored by an Indonesian entity to obtain the appropriate IMTA and other related documents.

KITAS, MERP and Blue Book

Once the foreign worker has arrived at an Indonesian airport (using the VITAS), the immigration officer who is in charge at the airport will provide a stamp of admission that indicates the foreign worker is permitted to enter Indonesia and must report to the Local Immigration Office within 7 days from the date of arrival at the airport. This means that within this 7-day period, the foreign worker is required to process a Limited Stay Permit (“KITAS”), Multi Exit Re-Entry Permit (“MERP”), and Immigration Control Book (“Blue Book”) at the Local Immigration Office where the foreign worker is domiciled.

The foreign worker is required to present himself to the Local Immigration Office as his fingerprints will be taken and he will need to sign various forms provided on the forms provided.

By holding the KITAS, MERP and Blue Book, the foreign worker has legally complied with the Indonesia immigration law and regulations. However, as a KITAS holder, the foreign worker will also be required to obtain in due course the following additional certificates or permits:

- Police Report Certificate (“STM”) issued by the Local Police Office where the foreign worker is domiciled (in Indonesia);
- Foreign Domicile Certificate (“SKTT”) issued by the Local Village Office where the foreign worker is domiciled (in Indonesia);
- Certificate of Family Composition of Foreign Citizen (“SKSKP”) issued by the Local Population and Civil Registry Office;
- Temporary Residence Card for Foreigner issued by the Local Population and Civil Registry Office;
- Certificate of Police Registration (“SKLD”) issued by the Indonesian Police Headquarters; and
- Report on the existence/arrival of foreign citizen issued by the Local MOMT office where the foreign worker is domiciled.

Working and Holidaying In Indonesia For Australians

The Minister of Law and Human Rights issued Regulation No. M.HH-04.GR.01.06 of 2009 to facilitate the issue of limited stay visas to Australian citizens based on a Memorandum of Understanding signed between the Governments of Indonesia and Australia on March 3, 2009. The regulation sets out the immigration facilities that are to be offered within the framework of these special limited stay visas.

Applications for the limited stay visas should be made in Australia and if granted will be valid for twelve months. The visa will allow the holder of the visa to work, with or without pay (volunteer work) in the education, tourism, health, social, sport, and cultural sectors. However, the work should not be an ongoing matter which requires a longer commitment of the person working on it.

There is an annual quota for the special limited stay visas. For each year from July 1st until June 30, the maximum number of special limited stay visas is one hundred. The visas are also subject to strict conditions:

- the main purpose for the foreigner to visit Indonesia during another season;
- the applicant is aged between eighteen and thirty;
- the applicant holds, at least, a certificate at academy level or is 2 years into a higher education qualification;
- the applicant holds a recommendation certificate from the Department of Immigration and Citizenship in Australia;
- the applicant is functionally literate in Indonesian;
- the applicant holds a return air ticket and has a minimum of AUD5000 in a bank; and
- the applicant has not previously been a participant in the working holiday scheme.

Presumably, the above conditions would need to be proven along with the visa application.

Certain fees are applicable for the visa application. However, the regulation does not specify the amount of the fees.

Other Comments

The Visit Visa, and Visit Visa on Arrival both allow their holders to enter Indonesia for business purposes. However, some immigration officials (in Jakarta) have viewed that a Visit Visa on Arrival and a Non-Visa Short Term Visit facility are only for “tourism purposes” (not applicable for business purposes). While this view is not necessarily correct from the legal perspective, a better solution to minimize risks of possible difficulties it is more advisable to use a Visit Visa to enter Indonesia for business purposes – keeping in mind, however, that an application for a Visit Visa for business purpose needs to be supported by an Indonesian sponsoring company.

Israel

Executive Summary

Israeli law generally provides for only one type of legal status relating to the employment of foreign nationals: the B-1 visa category (hereinafter: “the B-1 work visa”).

Israeli work visa procedure is set forth in the regulations of the Ministry of Interior’s Population Immigration and Border Authority (“PIBA”). These regulations define the various sub-categories in which an Israeli employer may sponsor a foreign national for a B-1 work visa. These sub-categories include the following: Foreign Experts; Construction; Agriculture; Nursing Professionals; Industry; Hotel Workers and Ethnic Restaurant Experts. This article will focus primarily upon the options available to Foreign Experts relating to temporary work and residence in Israel.

Key Government Agencies

In July 2008, in accordance with Government Decision 3434, the government established a national immigration authority, the Population, Immigration and Border Authority (“PIBA”) which functions under the auspices of the Ministry of Interior. In an effort to centralize the immigration process, PIBA unified 16 different government agencies which had previously been involved in various aspects of immigration and border control. Under the new system, the Israel Police; the Israel Defense Forces; the Ministries of Internal Security, Justice, Labor, Trade and Industry, Housing and Construction and Absorption; and the Jewish Agency will all be able to share information and contribute to PIBA’s operations.

Most work visa applications first require the approval of a visa petition by the petitioning employer filed with PIBA. The Ministry of Foreign Affairs is responsible for visa processing at Israeli consular

posts abroad. Consular notification is requested at a local office of the Ministry of Interior (MOI) following PIBA approval of a visa petition.

Inspection and admission of travellers is conducted by PIBA at Israeli ports of entry.

Investigations and enforcement actions involving employers and foreign nationals are executed by PIBA, in cooperation with Israel's Immigration Police force.

Current Trends

The employment of foreign experts in Israel has risen significantly in recent years. The demand for foreign experts in Israel can be attributed largely to the rapid advancement of the country's high-technology sector beginning in the 1990s, combined with the steady progress of globalization in general. In response, Israel is seeking to revise its policies with regard to the employment of foreign experts, beginning with the establishment of PIBA discussed above.

As part of the changes implemented following the establishment of PIBA, a new system for obtaining work permits also took effect. On January 1, 2009, PIBA's "Permit Unit" became the authority responsible for the issuance of work permits to foreign nationals. Prior to that date, applications for the employment of foreign workers were handled solely by the Ministry of Industry, Trade and Labor's (MOITAL) "Semech Unit."

Under the new system, applications for foreign workers must be submitted to PIBA's Permit Unit for consideration. While all employees of MOITAL's Semech Unit are now employed directly by PIBA, PIBA will continue to work in conjunction with MOITAL to receive guidance on issues relating to the issuance of work permits to foreign experts and foreign workers in the industrial field.

In addition to the organizational changes discussed above, another government decision set forth a number of restrictions relating to foreign workers in the industrial field, such as numerical limitations and testing of the local labor market, in an effort to gradually reduce the number of foreign workers in Israel in this sector of the economy. As such the 2009 annual cap for workers in the industrial branch stood at 700 work permits.

The government decision also states that “by 2010, only foreign experts whose salary is at least double the prevailing wage will be permitted to work....”. The government decision specifically states that the numerical limitations do not apply to foreign experts, as special procedures apply to foreign workers in this field.

Business Travel

B-2 Business Visitor Visa

Israeli law generally provides for only one type of visa category for both tourists and business travelers: The B-2 visa.

The term “business trip” is not specifically defined in Israeli law. Nonetheless, it is clear that if the purpose of the proposed travel to Israel entails productive work of any kind, a work permit must be obtained. This, regardless of the expected duration of the individual’s stay in Israel.

Because “business trip” is not specifically defined in Israeli law, the proposed activities of some foreign nationals may fall into a “grey area.” Examples include:

- individuals seeking to participate in R&D groups;
- install hardware; or

- provide field service support.

In such cases, it is recommended that the company first consult immigration counsel with regard to appropriate visa options.

A valid passport, and an entry visa are generally necessary for entry into Israel for business. For business travelers, B-2 procedure normally includes three separate bureaucratic steps:

- Submission of a visa application with the (MOI;
- Issuance of the B-2 visa at the relevant Israeli consular post abroad, prior to entry into Israel; and
- Extension of the B-2 visa at the MOI after arrival in Israel, if necessary.

Visa Waiver Program

As a rule, nationals of the European Union, the United States, Canada, Japan and other nations are admitted to Israel without an entry visa for a period of up to 90 days. No employment of any kind is permitted during this period. Extensions of this initial 90 day period may be approved by the Ministry of the Interior; for a maximum stay of six months.

The list of qualified countries can be found at: <http://www.embajada-israel.es/docs/consulado/%D7%98%D7%91%D7%9C%D7%AA%D7%90%D7%A9%D7%A8%D7%95%D7%AA%D7%9B%D7%9C%D7%9C%D7%99Nations2.pdf>

Training

There are no dedicated training permits – a foreign employee seeking to attend mid to long-term training in Israel will likely require a B-1 work visa.

Employment Assignments

Unlike many countries in North America and Europe that offer a wide range of work permits with varying eligibility criteria, Israel offers only one type of work permit, the B-1 visa. Under the B-1 “umbrella,” foreign experts, unskilled workers, foreign spouses of Israeli citizens and potential Jewish immigrants may apply for work authorization.

In distinguishing between an expert and an unskilled foreign worker, the Israeli government applies various directives and regulations on handling applications for foreign experts, which are based on internationally accepted concepts commonly applied in other countries.

The following six defining criteria are typical characteristics of foreign experts:

- First, the expert will receive a monthly salary and benefits which equal at least double that of the prevailing wage in Israel. This salary requirement is a minimum condition for consideration as a foreign expert, since individuals possessing special skills and expertise are typically paid higher wages than lower skilled or average employees.
- In addition to this minimum requirement, an employee must meet at least two out of the next five criteria to be recognized as an expert:

1. The Expert possesses special qualities and skills. “Special qualities and skills” can be acquired through years of experience in a certain field of endeavor or knowledge of certain work processes and procedures not generally found in the Israeli labor market. In order for an employee to meet this criterion, the Israeli employer must prove that the prospective foreign worker will transfer such qualities and skills to a local employee. This criterion underlies the temporary nature of the employment of the foreign expert, as he/she will ultimately be replaced by an Israeli employee upon completion of “skills transfer”.
2. The Expert will create jobs for Israelis at a ratio of 1:10 (*i.e.*, 10 job opportunities created for each foreign expert hired).
3. The Expert possesses a high level of education (academic credentials) and professional background.
4. The Expert will transfer to Israel specialized knowledge which is not commonly found in the local job market.
5. The Expert will be employed in a managerial or specialized capacity.

As a member of the World Trade Organization (WTO) and a partner in the General Agreement on Trade in Services (GATS), Israel has committed to allowing managers and executives of foreign multinational companies to enter the country for the purpose of participating in foreign-invested projects operating in Israel. GATS sets forth the criteria for both “managerial” and “executive” capacity that are used to determine whether a foreign worker is eligible for a B-1 visa in this regard.

According to the Regulations, the following categories of workers are considered foreign experts:

- **Expert earning “an expert wage”** – This category is intended for an individual who possesses a high level of expertise or specialized and essential skills that are required for the service provided by the employer, and which cannot be found in the Israeli labor market. For this category, the Israeli employer must pay the expert a monthly wage at least twice the average monthly wage paid to salaried employees in the Israeli job market.
- **Manager, Senior Representative, or Employee of a foreign or multi-national corporation in a position requiring a great deal of personal trust** – A foreign corporation (with no corporate presence in Israel) or a multinational corporation (with an Israeli subsidiary, affiliate or branch office) may apply for a work permit for a foreign expert who will function as a Manager, Senior Representative, or other Employee in a position requiring a great deal of personal trust. A “Manager” is defined by the Regulations as “a person who guides or establishes the goals and policies of an organization or a department of an organization, and who functions at a senior level, and maintains responsibility for company operations through supervision, control and authority to hire and fire employees or to recommend other personnel related actions”. The criteria for a “Senior Representative or Employee in a position requiring a great deal of personal trust” are not specifically defined by the regulations. However, the Regulations do emphasize that a foreign corporation or multinational corporation is not be permitted to employ more than two foreign workers in this category.
- **Senior Staff Member in a foreign airline or foreign shipping company.**

- **Lecturer or Researcher in an Institution of Higher Learning.**
- **Medical trainee or expert in a hospital.**
- **Foreign Artist or Foreign Athlete.**
- **Foreign national coming to Israel to perform a temporary task which does not exceed a period of three months.**

The Regulations also set forth special procedures for foreign employees in the diamond industry, foreign journalists and photographers, and family members of foreign diplomats.

The accompanying family members of a foreign expert are issued B-2 tourist visas that are generally valid for the same duration as the foreign expert's B-1 visa. Accompanying family members holding B-2 visas are permitted to remain in Israel and attend school, but they are not authorized to work.

Other Comments – Israel's Underlying Immigration Policy

In order to understand Israel's policy towards foreign experts, it is imperative to first consider the country's attitude towards non-Jewish foreigners in general. Israeli immigration policy has been a topic of debate since the establishment of the State in 1948.

Founded as the Jewish State, Israel's underlying immigration policy is that it is not a "nation of immigrants" but rather a "nation of olim" (Jewish immigrants)." As such, Israel encourages immigration of Jewish people under the Law of Return, which provides that every Jew has the right to enter Israel as a new immigrant and enjoy a plethora of social and health benefits.

In parallel, Israeli law makes it extremely difficult for non-Jewish persons to reside temporarily or permanently in the country. Indeed, the ethnic-religious nature of nationalism in Israel, the absence of an egalitarian conception of citizenship for non-Jews, and the highly restrictive nature of the country's naturalization policy significantly impact upon the ability of foreign workers to obtain work authorization. Even if a foreign expert B-1 visa is obtained, the concept of "employment based legal permanent residence" does not exist.

Italy

Executive Summary

The Italian law provides many solutions to help employers of foreign nationals. These range from short-term to long-term visas. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

Italian diplomatic authorities and consular representatives are responsible for visa processing. In order to obtain an entry-visa, an application will have to be filed with the Visa Department along with a number of documents. The issuance of the visa is at the discretion of such diplomatic authorities, meaning that under the applicable laws, the Diplomatic and Consular Representations are entitled to discretionally ask for any additional information or documents they deem necessary to evaluate the application.

Many visa applications require first the approval of a work permit (“nulla osta”) petition by the prospective Italian employer filed with the Italian Immigration Office through a dedicated public office (“sportello unico per l’immigrazione”) responsible for many aspects of the immigration process, together with a number of documents. The issuance of the “nulla osta” is at the discretion of the Immigration Office.

The Immigration Office processes work permit applications through the local Labor Office (“Ufficio Provinciale del Lavoro”) and the “nulla osta” through the local Foreigner’s Bureau of Police Headquarters (“Questura”), which also handles the permit to stay (“permesso di soggiorno”) after arrival in Italy.

Current Trends

A distinction should be made between EU citizens and non-EU citizens as far as immigration and becoming a resident in Italy is concerned.

EU citizens have the right of free movement throughout the EU, though certain restrictions still apply to citizens of those countries that joined the EU in January 2007. If a EU citizen wishes to work or be domiciled in Italy, presence in the country needs to be declared at the local register office, specifying the purposes and financial means to support the citizen and accompanying family members in Italy.

Non-EU citizens are subject to stricter requirements in order to obtain work and residence permits. There is a fixed quota of permits available each year, and a non-EU person needs gainful occupation with an Italian employer or financial means to support while in Italy.

In a decree dated April 1, 2010, the central government set quota limits on the maximum number of non-EU citizens that may enter the country for seasonal work (*e.g.*, tourism and agricultural sectors) for the year 2010 at 80,000. Instead, no quotas were made available in 2010 for residence and working purposes, with the sole and limited exception of entrepreneurs and free-lance workers, admitted in the limited number of 4,000. It normally occurs that a significant number of quotas are reserved for citizens of specifically designated countries that have enacted bilateral agreements with Italy on immigration issues.

Further, Italian immigration laws provide for a number of different immigration permits that are granted for specific reasons and outside the numerical restrictions of the quotas.

It is increasingly important for employers to ensure that foreign employees in Italy comply with all legal formalities. Employers of

foreign nationals unauthorized for such employment are subject to civil and criminal penalties.

Employers involved in mergers, acquisitions, reorganizations, etc., must evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

Business Travel

Business Visa

Foreign nationals coming to Italy on short-term business trips may use the business visa. In general terms, in order to obtain a business visa, it is necessary that the concerned individual/employee be traveling to Italy for “economic or commercial purposes, to make contacts with local businesses or carry out negotiations, to learn, to implement or to verify the use of goods bought or sold via commercial contracts and industrial cooperation.”

Employment in Italy is not authorized with a business visa. Each individual may benefit from one 90-day business visa in any given 180-day period, and it allows multiple entries in the Schengen Area during its validity period. This visa requires a return-trip booking or ticket or proof of available means of personal transport, proof of economic means of support during the journey, health insurance with a minimum coverage of € 30,000.00 for emergency hospital and repatriation expenses, the business purpose of the trip and the status as financial-commercial operator of the applicant.

Visa Waiver

As noted previously, EU citizens have the right of free movement throughout the EU, although certain restrictions still apply to citizens of those countries that joined the EU in January 2007.

The normal requirement of first applying to an Italian consular post for the business visa is waived for foreign nationals of certain countries. The permitted scope of activity is the same as the business visa. The length of stay is up to 90 days only, without the possibility of a stay extension or status change. A departure ticket is required.

The following countries are presently qualified under this program: Andorra, Argentina, Australia, Bolivia, Brazil, Brunei, Canada, Chile, Costa Rica, Croatia, Cyprus, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Salvador, San Marino, Singapore, South Korea, Switzerland, United States of America, Uruguay, Vatican (“Santa Sede”), and Venezuela.

The list of qualified countries might change and the regularly updated list is at

www.esteri.it/MAE/IT/Ministero/Servizi/Stranieri/ServReteConsolare.htm#ingresso.

Training

Study Visa

A study visa allows foreign nationals to come and stay in Italy for a short or long period in order to attend ordinary university courses, as well as other training courses or vocational training held by qualified or certified entities, or as an alternative to foreign nationals who will perform educational and research activities. This visa requires:

- Documents concerning the study, training or vocational courses to be attended by the applicant;
- Proof of economic means of support during the entire stay in Italy;
- Health insurance covering health care and hospitalization, unless the applicant is entitled to public health assistance in Italy according to any bilateral agreement in force between Italy and his/her country of origin; and
- Age more than fourteen years.

Employment Assignments

Permits granted to non EU citizens outside quotas

Permit issued pursuant to article 27, par. 1, lett. a) of the Italian immigration law (Legislative Decree 286/1998)

This is a special type of permit, valid for up to 5 years, for managers or highly skilled employees employed by a company abroad and who come to Italy in order to perform activities within an Italian company through secondment.

In order to obtain a work and residence permit, an application must be filed through an online system, containing the terms and conditions of a subordinate employment relationship (“contratto di soggiorno per lavoro”) that will be entered into with the foreigner. This “contratto di soggiorno per lavoro” is a substantially new type of employment agreement and will have to contain two requisitions to be valid:

- The guarantee that the employer shall provide the foreigner with a house or other living facilities; and

- The undertaking to pay travel expenses for the foreigner to return to his country of origin, once his permit has expired or he does not obtain a renewal.

The “contratto di soggiorno per lavoro” has to be signed with the mediation of the sportello unico per l’immigrazione. This office, before validating the agreement, verifies that there are no Italian citizens willing to enter into the employment agreement offered to the foreign citizen.

The duration of the permit shall be as follows:

- For seasonal employment, no longer than nine months;
- For fixed term employment, one year; or
- For employment for an indefinite period of time, one year.

The spouse of a holder of a permit and children who enter Italy before the majority age (or for those who, in any case, cannot autonomously provide for their own needs) may obtain a work and residence permit independently from the quota system for the same period of validity of the work permit.

Permit issued pursuant to article 27, par. 1, lett. i) of the Italian immigration law (Legislative Decree 286/1998)

This is a special type of permit for a non-EU citizen, regularly employed and salaried by foreign employers who come to Italy for employment reasons on a temporary basis through secondment in order to perform their activities under a contract (“contratto di appalto”) executed between their employer and an Italian client.

Permits are valid for a maximum period of two years and are not renewable. Also this type of work permit is granted outside numerical quota restrictions that otherwise generally apply to non-EU citizens.

The spouse of a holder of a permit and children who enter Italy before the majority age (or for those who, in any case, cannot autonomously provide for their own needs) may obtain a work and residence permit independently from the quota system for the same period of validity of the work permit.

Employers must promise to give foreign employees wages, working conditions and benefits equal to those normally offered to similar employed workers in Italy.

In order to obtain a work and residence permit, an application must be filed through an online system, containing the terms and conditions of a subordinate employment relationship, known as “contratto di soggiorno per lavoro”, that will be entered into with the foreigner. This “contratto di soggiorno per lavoro” is a substantially new type of employment agreement which will have to contain two requisitions to be valid:

- The guarantee that the employer shall provide the foreigner with a house or other living facilities; and
- The undertaking to pay travel expenses for the foreigner to return to the country of origin, once the permit has expired or is not renewed.

The “contratto di soggiorno per lavoro” has to be signed with the mediation of the sportello unico per l’immigrazione. This office, before validating the agreement, verifies that there are no Italian citizens willing to enter into the employment agreement offered to the foreign citizen.

Other Comments

There are additional visas less frequently used for global mobility assignments worth a brief mention. One of them is the Mission Visa, which is issued at the discretion of the Italian diplomatic authorities and consular representatives in the place of residence of applicants coming to Italy for, *int. al.*, “reasons of public utility between a foreign state/international organization and Italy.” This type of visa is granted outside numerical quota restrictions. This visa requires:

- An invitation letter prepared by the concerned foreign state or international organization outlining clearly the purposes of the invitation, the scope and the description of the mission that the invited applicant will have to perform, the duration of the stay in Italy, and the entity that will bear the travel and living costs;
- Letter from the applicant outlining the proposed itinerary and confirming the purpose of the trip and the duration of the stay as indicated in the invitation letter; and
- A confirmed return airplane ticket or return airplane ticket reservation print-out (open airplane tickets are acceptable).

Processing time for this application will depend on the caseload of the Italian Consulate at the time of application. It is normal for the process to take 90 - 120 days or longer. Once the visa has been issued and within eight days from entering Italy, the concerned employee will have to file an application, via an Italian post-office, to the local police office (“Questura”) in order to complete the immigration procedure and obtain the final stay permit - a meeting with the local police office and the foreigner is required for this purpose.

A non-EU citizen, who has legally resided (*i.e.*, by means of a regular work and residence permit) in Italy for more than ten years, may request Italian citizenship. Citizenship is discretionally granted by

decree of the President of the Republic, upon proposal of the Ministry of Internal Affairs.

Japan

Executive Summary

In general, a foreign national who comes to Japan must apply for landing permission at the port of entry. If Japanese border officials grant the landing permission, residency status from the twenty seven different types of status of residence will be issued corresponding to the nature and period of stay. Foreigners in Japan are allowed to engage only in those activities permitted under the residency status granted.

Except for temporary visitors, in most cases it is recommended for foreigners to obtain a Certificate of Eligibility prior to coming to Japan.

In addition, foreigners are generally required to obtain an appropriate visa from a Japanese consulate. In Japan the term “visa” carries all, or at least one, of the following meanings:

- a visa issued from a Japanese consulate located overseas;
- landing permission applicable at the port of entry; or
- a visa granting residency status.

Key Government Agencies

The Immigration Bureau of the Ministry of Justice has jurisdiction over immigration and residence in Japan. The Immigration Bureau has eight regional immigration bureaus, six district offices, 63 branch offices and three detention centers. The Immigration Bureau is in charge of entry into and departure from Japan, residency, deportation and recognition of refugee status.

The issuance of visas is handled by Japan's Ministry of Foreign Affairs through consulates and diplomatic offices abroad.

Current Trends

Beginning in November 2007, all applicants (with limited exemptions) upon arrival must submit personal identification, be fingerprinted and photographed as part of an immigration inspection.

In Japan, the focus is on facilitating entry and residency for foreign nationals with specialized knowledge and skills, while the admission of unskilled foreign laborers has generally been outside the scope of discussion.

Since the end of the 20th century, however, Japan's rapidly aging society has resulted in a diminished workforce. As a result, certain industries face serious labor shortages and are now considering foreign labor as a solution. For example, nursing is an industry where the Japanese government has attempted to address the labor shortage by entering into agreements with certain countries (*e.g.*, Indonesia and the Philippines) to allow citizens of those countries to enter Japan to study and work. It is anticipated that the government will ease restrictions to allow entry of unskilled foreign labor as Japanese industries continue to struggle with labor shortages due to the shrinking work force.

Beginning April 1, 2010³, applicants seeking to change their residency status or extend their period of stay will be required to show their health insurance identification card to immigration officials when they submit their application. If a company is filing on behalf of an applicant, a photocopy of the health insurance identification card will be required.

³ As at July, 2010, this has not been yet followed in practice.

The Japanese government officially announced revisions to the Immigration Control and Refugee Recognition Act in July 2009. Currently, records for foreign residents are separately controlled by the Immigration Bureau and local municipal offices. The changes to the system are designed to consolidate the management of records for foreign residents in Japan under the Immigration Bureau and to better ensure that administrative services are available for foreign residents of Japan. In addition, the current alien registration system will be replaced with a new system which uses a “Residency Card” (tentative title) by July 1, 2012. Upon the implementation of the Residency Card system, the valid period for visas and re-entry permits will be extended up to 5 years. Holders of the Residency Card will not be required to obtain re-entry permits for absences from Japan lasting no more than 1 year.

Finally, effective from July 1, 2010, the government will create a new residency status tentatively titled “Technical Intern Training” and, in addition, will unify the College Student and Pre-College Student status as “Student” status.

Business Travel

Temporary Visitor

The status of “temporary visitor” is for foreign nationals who intend to stay in Japan for a limited amount of time (up to ninety days) for such business purposes as meetings, contract signings, market surveys and post-sale services for machinery imported into Japan.

Activities involving business management (*i.e.*, profit making activities) or remuneration other than those activities permitted under the residency status (“paid activities”) by temporary visitors is not permitted. Violation of residency status rules is considered illegal labor. Both the foreign worker and employer may incur criminal liability.

“Paid activities” means activities for remuneration for certain services, such as employment by another person or organization for compensation or any other activities for compensation (both financial and material) for completion of any project, work or clerical work. There is an exemption for certain types of incidental or nonrecurring compensation of certain amounts that occur within a regular, daily life.

In principle, temporary visitor status may not be extended because it is intended for foreign nationals who stay in Japan for a short period of time.

Visa Waiver

Currently, Japan has entered into reciprocal visa exemption agreements with sixty one countries and regions. Foreign nationals from these areas are not required to obtain a visa to enter Japan if: the purpose of their stay is authorized under the temporary visitor visa status; and the length of the stay does not exceed the terms of the agreement between their country and Japan (either 6 months, ninety days (3 months), thirty days or fifteen days).

List of Countries and Regions With Visa Exemption

Countries and Regions	Term of residence
Asia	
Singapore	3 months or less
Brunei	14 days or less
Hong Kong (BNO, SAR passport)	90 days or less

Countries and Regions	Term of residence
Korea	90 days or less
Taiwan	90 days or less
Macau (SAR passport)	90 days or less
North America	
Canada	3 months or less
U.S.A.	90 days or less
Europe	
Austria	6 months or less
Germany	6 months or less
Ireland	6 months or less
Liechtenstein	6 months or less
Switzerland	6 months or less
United Kingdom	6 months or less
Belgium	3 months or less
Croatia	3 months or less
Cyprus	3 months or less

Countries and Regions	Term of residence
Denmark	3 months or less
Finland	3 months or less
France	3 months or less
Greece	3 months or less
Iceland	3 months or less
Italy	3 months or less
Luxembourg	3 months or less
Macedonia	3 months or less
Malta	3 months or less
Netherlands	3 months or less
Norway	3 months or less
Portugal	3 months or less
San Marino	3 months or less
Slovenia	3 months or less
Spain	3 months or less
Sweden	3 months or less

Countries and Regions	Term of residence
Andorra	90 days or less
Bulgaria	90 days or less
Czech Republic	90 days or less
Estonia	90 days or less
Hungary	90 days or less
Latvia	90 days or less
Lithuania	90 days or less
Monaco	90 days or less
Poland	90 days or less
Romania	90 days or less
Slovakia	90 days or less
Latin America and Caribbean	
Mexico	6 months or less
Argentina	3 months or less
Bahamas	3 months or less
Chile	3 months or less

Countries and Regions	Term of residence
Costa Rica	3 months or less
Dominican Republic	3 months or less
El Salvador	3 months or less
Guatemala	3 months or less
Honduras	3 months or less
Suriname	3 months or less
Uruguay	3 months or less
Middle East	
Israel	3 months or less
Turkey	3 months or less
Oceania	
Australia	90 days or less
New Zealand	90 days or less
Africa	
Mauritius	3 months or less
Tunisia	3 months or less

Note that if there is a waiver of visa requirements of up to three months or ninety days, upon landing foreigners are granted a temporary visitor status for a period of ninety days (fifteen days for Brunei).

Nationals of countries and regions that have taken measures concerning the waiver of visa requirements with Japan for stays of up to 6 months are granted permission to stay in Japan for ninety days at the time of entry. Nationals of these countries and regions who wish to stay in Japan for more than ninety days must apply at their nearest immigration authority in Japan for an extension of their period of stay.

However, nationals of some of these countries that have taken measures concerning the exemption of visa requirements, including Malaysia (since June 1, 1993), Peru (since July 15, 1995), and Colombia (since February 1, 2004), are still encouraged to obtain visas before entering Japan; otherwise these nationals without visas will be strictly examined upon entering Japan.

Similarly, the above measure applies to those who possess Non-Machine-Readable passports commencing on April 1, 2010, in the case of nationals of Barbados and Lesotho.

Training

Trainee status is granted to foreign nationals who come to Japan in order to acquire technological skills or knowledge by training at public organizations or private companies.

Trainee status was designed to facilitate international cooperation with, and contribution to, developing countries by inviting nationals from those countries to come to Japan for training. Trainee visa holders are expected to contribute to the development of their countries after training in Japan.

Despite its stated purpose of facilitating cooperation with developing countries, trainee visa status is actually very difficult to obtain. Applicants must submit detailed information, including not only personal information but also the contents of the training, the profile and the training system of the inviting organization, the training period, and any limitations on the number of trainees invited and compensation.

Employment Assignment

Foreigners may engage in the activities authorized for the specified period of time under their visa only after obtaining the appropriate residency status. Therefore, it is crucial that the applicant and intended activities meet the criteria for at least one residency status category, as well as fulfill the criteria required specifically by the status of residence for which they are applying.

Among the twenty seven types of visas allowed in Japan, twenty one create residency status and allow the applicant to engage in profit making activities and paid activities. The 4 most common residency statuses for employment are Engineer, Specialist in Humanities/International Services, Intra-company Transferee and Investor/Business Manager visas, as well as the Dependent visa for dependent family members.

Engineer

Foreigners coming to engage in services that require technology and/or knowledge pertinent to physical science, engineering or other natural science fields on the basis of a contract with public organizations or private companies in Japan generally rely on Engineer residency status. For these purposes, natural science includes such fields as agriculture, medicine, dentistry, pharmacology, *etc.* Typical professions requiring Engineer visa status are IT or biotechnology engineers.

The law requires the activities to be based on a contract with public organizations or private companies in Japan, therefore, the applicant must enter into an employment agreement, service contract or consignment agreement, *etc.* The applicant's employer must have an office located in Japan and, in many cases, is required to arrange social and labor insurance for the applicant.

Applicants must either:

- Have graduated from or completed a course at a college or acquired an equivalent education majoring in a subject relevant to the skills and/or knowledge necessary for the proposed employment;
- Have at least ten years experience (including time spent studying the relevant skills and/or knowledge at a college or upper secondary school, *etc.*); or
- Be coming to work in a job that requires skills or knowledge concerning information processing for which the applicant has passed an information processing skills examination designated by the Minister of Justice or has obtained the information processing skills' qualification designated by the Minister of Justice.

In addition, the applicant must be offered a salary equal to salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount which satisfies this requirement; however, it is currently understood that a minimum of ¥200,000 is to be paid as monthly salary.

Specialist in Humanities/International Services

This visa was designed to authorize services that require knowledge pertinent to jurisprudence, economics, sociology or other human

science fields; or to engage in services that require specific training or sensitivity based on experience with foreign cultures.

Examples are professionals in international trade and/or sales, translation and interpretation requiring language skills, copywriting and public relations requiring sensitivity unique to foreign background and fashion design.

This visa also requires an employment agreement, service contract or consignment agreement, *etc.* with public organizations or private companies. The applicant's employer must have an office located in Japan and in many cases is required to arrange social and labor insurance for the applicant.

Applicants must either:

- Have graduated from or completed a course at a college or acquired an equivalent education majoring in a subject relevant to the skills and/or knowledge necessary for the proposed employment;
- Have at least ten years experience (including time spent studying the relevant skills and/or knowledge at a college or upper secondary school, *etc.*); or
- If the job requires specific training or sensitivity based on experience with foreign cultures, the applicant must have a minimum of 3 years experience in the relevant field, except where the applicant is to engage in translation, interpretation or language instruction.

Furthermore, the applicant must receive salary equal to salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount which

satisfies this requirement; however, it is currently understood that a minimum of ¥200,000 is to be paid as monthly salary.

Intra-company Transferee

This visa authorizes activities for personnel transferred to business offices in Japan for a limited period of time from business offices established in foreign countries by public organizations or private companies which have head offices, branch offices or other business offices in Japan and where applicants' work at these business offices is encompassed by the activities described in the Engineer or Specialist in Humanities/International Services status.

The applicant must be transferred from a business office located overseas to a business office in Japan, both offices being of the same company, to engage in a job requiring skills or knowledge pertinent to physical science, engineering or other natural science fields, or knowledge pertinent to jurisprudence, economics, sociology or other human science fields, or to engage in services which require specific training or sensitivity based on experience with foreign cultures.

The main difference among the Inter-company Transferee, Engineer and Specialist in Humanities/International Services residency status categories is that an Inter-company Transferee status does not require the applicant to have a contract with public organizations or private companies in Japan. The applicant therefore may receive his/her salary from business offices overseas.

Transfers between offices of the same company include transfers between the parent company and its subsidiary as well as transfer between group companies that have a certain level of financial ties with each other. In addition, applicants for Intra-company Transferee residency status are different from applicants who are to operate or manage businesses of business offices located in Japan (who should apply for the Investor/Business Manager status).

Applicants must have been continuously employed at business offices outside of Japan for at least one year immediately prior to the transfer to Japan in a position that falls under the residency status categories of Engineer or Specialist in Humanities/International Services.

Further, the applicant must receive salary equal to salary a Japanese national would receive for comparable work. The Immigration Bureau does not announce the actual amount which satisfies this requirement; however, it is currently understood that a minimum of ¥200,000 is to be paid as monthly salary.

Investor/Business Manager

This visa authorizes foreign nationals to commence the operation of international trade or other activities, invest in international trade or other businesses, and operate or manage international trade or other business on behalf of a foreign national (including foreign corporations). This includes foreign nationals who intend to:

- Invest in and operate a business in Japan;
- Operate a business on behalf of foreign nationals who have invested in such business;
- Operate a business on behalf of foreign nationals who have begun operations of such business;
- Manage business on behalf of foreign nationals who have begun such operations or have invested in such businesses; or
- Manage businesses operated in Japan by foreign nationals.

Investor/Business Manager residency status is for applicants who substantively operate or manage a business (“Business Operator”) by making decisions regarding important business operations or the

duties of the company auditors and for employees engaged in management of the company's internal departments of a certain level or higher ("Managers"). Examples of Business Operators include the president, director and auditor, *etc.* Examples of Managers includes department managers, factory heads and branch manager, *etc.*, subject to the size of the business and the number of employees at the office in Japan.

To qualify, the office for the business concerned must be located in Japan (for private companies, the office needs to be registered with the Legal Affairs Bureau) and the business must have the capacity to employ at least 2 full-time employees residing in Japan in addition to those who operate or manage the business. Full-time employees mentioned here excludes foreign nationals residing in Japan, except for those foreign nationals with residency status as "Permanent Resident," "Spouse or Child of Japanese National," "Spouse or Child of Permanent Resident" or "Long Term Resident."

Further, if the applicant is to invest in international trade or other business in Japan and operate or manage that business, or if the applicant is to operate or manage international trade or other businesses on behalf of foreign nationals who have begun such operations in Japan or have invested in such a business in Japan, the following condition must be satisfied:

- The office for the business must be located in Japan (for private companies, the commercial registration must be completed prior to the visa application); and
- One of the following conditions should be satisfied:
 - The business concerned must have the capacity to employ at least 2 full time employees residing in Japan in addition to those who operate and/or manage the business. Full time employees mentioned here excludes foreign

nationals residing in Japan, except for foreign nationals with residency status as “Permanent Resident”, “Spouse or Child of Japanese National”, “Spouse or Child of Permanent Resident” or “Long Term Resident”; or

- The amount of investment should be at least JPY 5 million, which may vary depending on the size of entire business operating in Japan.

If the applicant is to engage in the management of international trade or other business in Japan, the applicant must:

- Have at least 3 years experience in the operation or management of the business (including the time during which the applicant majored in business operation and/or management at a graduate school); and
- Receive salary equal to salary a Japanese national would receive for comparable work.

Dependent

Residency status as a Dependent is for applicants whose daily activities are as the spouse or dependent child of foreign nationals who stay in Japan with a status of residence other than “Diplomat,” “Official,” “Temporary Visitor,” “Pre-college student” or “Designated Activities.”

A dependent spouse must be legally and substantively married to the principal applicant. The Immigration Bureau does not recognize common-law or same-sex marriages. Dependent children include adult children (age twenty or above) and adopted children.

Permissible “daily activities” include non-profit making activities which family members are reasonably expected to be engaged in, such

as household duties or attending elementary and high schools. Profit making activities and paid activities are excluded. However, job hunting is considered to be within a Dependent's authorized activities. Subject to obtaining special permission from the Immigration Bureau, a family visa holder may engage in profit-making activities within the limit of 28 hours per week.

Other Comments

Certificate of Eligibility

The Certificate of Eligibility ("CoE") is a document issued by the Minister of Justice prior to arrival at a port of entry in Japan, certifying that the applicant fulfills the requirements for the residency status requested. It is the applicant's responsibility to prove conformance to the disembarkation and residency requirements. The CoE procedure, which aims to complete the inquiry into the applicant's qualification prior to arrival, helps to expedite the process for landing permission at the port of entry.

The CoE evidences that the examination of residency status and disembarkation permission have already been completed. Therefore a CoE will speed up the visa process at the Japanese consulate overseas (usually completed within 3 to 5 business days after filing) as well as the process for obtaining landing permission at the port of entry.

In principle, the applicant's proxy (*e.g.*, staff of the sponsoring company) or its agent (*i.e.*, authorized attorney at law and administrative scrivener or "*gyoseishoshi*") in Japan must submit the CoE application to the local Immigration Bureau. The application documents, as provided by the Immigration Control Act Enforcement Regulations, differ depending on each visa category.

Reentry Permit

The residency status granted to foreign nationals at the time of their entry automatically expires upon departure. If a foreign national subsequently wishes to re-enter and continue the residency status they were previously granted, it is important to obtain re-entry permission prior to departure. By obtaining re-entry permission prior to leaving, the procedure for entry and landing can be simplified and the foreign national can retain residency status for the stay period originally granted.

Further, a foreign national with a re-entry permit may register personal identification information (*e.g.*, fingerprints and photograph) with the Immigration Bureau prior to departure in order to further simplify the immigration inspection at the time of departure and re-entry.

Extension of Period of Stay

If a foreign national wishes to remain in Japan under the same residency status beyond the period originally approved and for the same purpose, they must apply for permission at their local Immigration Bureau before the current visa expires.

Filing an application does not mean an extension of stay will be approved. The Minister of Justice will give permission only if the Minister determines there are reasonable grounds to grant an extension.

As mentioned earlier, Temporary Visitor status generally may not be extended, because it is intended only for foreign nationals who plan to stay in Japan for a short period of time.

Change of Residency Status

If a foreign resident in Japan wishes to change the activities authorized under their current residency status, they must obtain permission to change their residency status from the local Immigration Bureau.

Certificate of Authorized Employment

A Certificate of Authorized Employment certifies that a foreign national seeking employment in Japan is legally authorized to be engaged in certain types of jobs. This certificate may be issued by the Minister of Justice when a foreign national files an application with the local Immigration Bureau for such purposes, such as when intending to switch to another company for a job which falls under their current residency status.

Alien Registration

A foreign national who has stayed or intends to stay in Japan for more than ninety days must file an alien registration application at the local municipal office for the area in which they live.

Once registration is completed, a Certificate of Alien Registration certifying registration will be issued from the municipality. All foreign nationals sixteen years old or over are required to carry a Certificate of Alien Registration at all times during their stay in Japan.

If there is any change to information registered under the Certificate of Alien Registration (*e.g.*, change of address), a foreign national must apply to register the change at the local municipal office for the area in which they live within a certain period of time.

Republic of Kazakhstan

Executive Summary

In the Republic of Kazakhstan, the procedures to obtain visas are complicated and time-consuming. Foreigners coming to Kazakhstan for work, studies or living may face a heavy bureaucracy. In addition to work visas, foreign employees must also obtain a work permit.

Kazakhstan recognizes two types of foreigners:

- Foreigners permanently living in Kazakhstan (“Permanent Foreigners”); and
- Foreigners temporarily residing in Kazakhstan (“Temporary Foreigners”).

Permanent Foreigners are those who hold a Kazakhstani residence permit. Permanent Foreigners may work in Kazakhstan without a work permit or a work visa on the same basis as citizens of Kazakhstan. They are also covered by the social and pension schemes adopted in Kazakhstan. In contrast, Temporary Foreigners are those that reside in Kazakhstan on the basis of their national passport and a Kazakhstani visa, and, in order to hire a Temporary Foreigner, an employing company must obtain a work permit.

Subject to certain exceptions, some of which are specifically addressed below, a foreign citizen must obtain a visa before entering to Kazakhstan. There are different types of visas, which depend on the purpose of stay and the status of a foreigner: (1) Diplomatic Visas (up to 2 years); (2) Official Visas (up to 2 years); (3) Investor Visas (up to 2 years); (4) Business Visas (up to 1 year); (5) Private Visas (up to ninety days); (6) Tourist Visas (up to sixty days); (7) Student Visas (up to 1 year); (8) Work Visas (up to 1 year); (9) Medical Treatment

Visas (up to 6 months); (10) Permanent Residence Visas (up to ninety days); and (11) Transit Visas (up to thirty days).

Generally, obtaining a Kazakhstani visa consists of the following two stages:

- I Stage: - obtaining a visa endorsement number from the Consular Service Department (the “Consular Department”) of the Ministry of Foreign Affairs (the “MFA”) in Almaty or Astana city;
- II Stage: - obtaining a visa on the basis of the visa endorsement number from a Kazakhstani Consulate or Embassy abroad.

Key Government Agencies

The Ministry of Foreign Affairs of Kazakhstan (the “MFA”) is responsible for visa processing at Kazakhstani consular posts abroad.

Current Trends

Foreigners violating the migration rules of Kazakhstan may be punished in accordance with Administrative and/or Criminal Law.

Administrative Liability

Depending on the grievance of the violation, a foreign citizen who violates any visa, work permit or migration rules of Kazakhstan, may face the following penalties:

- Administrative fine (up to approx. US\$ 500);
- Forced curtailment of authorized stay in Kazakhstan;

- Administrative arrest (up to fifteen calendar days); or
- Forced deportation from Kazakhstan.

A foreign citizen may be forcefully deported from Kazakhstan only on the basis of a court ruling. Deportees not be allowed to enter Kazakhstan for 5 years from the date of deportation.

A Kazakhstani company that violates the work permit or migration rules of Kazakhstan may face one of the following penalties:

- Administrative fine (up to approx. USD 5,000); or
- Suspension or revocation of the work permit issued to the company.

Criminal Liability

If a foreign citizen does not leave Kazakhstan when told to do so by the migration police, potential penalties include:

- penalty in the amount of approx. USD 1,000 - USD 5,000 (or 5 times monthly salary);
- an administrative arrest (up to 6 months); or
- imprisonment (up to 1 year).

For intentional illegal crossing of the Kazakhstani border, *e.g.*, without a national passport or a proper visa, a foreigner may be penalized as follows:

- administrative fine (USD 2,000 – USD 5,000); or
- imprisonment (up to 2-5 years).

A company manager, who repeatedly violates the work permit rules of Kazakhstan, may be penalized as follows:

- administrative fine (USD 5,000 – USD 9,000); or
- forced community service work (100-240 hours).

Business Travel

Business Visa

A business visa is required if a foreigner is employed abroad and visits Kazakhstan for a short business trip. The permissible activities for the Business Visa include a business meeting or negotiations, attendance of symposiums, conferences, tenders, conclusion of contracts, creation of a joint venture, marketing, participation in exhibitions and fairs, trade operations and international transportation, and consulting and audit services.

A foreigner may work in Kazakhstan on the basis of a business visa for up to sixty calendar days per calendar year. If the foreigner works or stays for business purposes for a longer period, this is deemed to be employment in Kazakhstan. In such cases, the company must obtain a work permit, and the foreigner must obtain a work visa.

Visa Waiver

There are a number of foreign states that have signed international agreements with Kazakhstan, which allow citizens to enter and reside in Kazakhstan without any visa for a certain period of time.

Note that absence of a visa requirement does not necessarily exempt companies that employ the citizens of such countries from the requirement to obtain a work permit. Only Permanent Foreigners are exempted from the requirement for a work permit.

Turkish citizens holding a foreign passport may stay in Kazakhstan without a visa for up to one month. This agreement does not specify whether this one month, visa-free stay period covers a single trip or a series of trips.

Turkish citizens residing in Kazakhstan without a visa are not allowed to work in Kazakhstan during the one month period of their visa-free stay. If the purpose of the stay is business or employment, a Turkish citizen must obtain an appropriate visa for entering Kazakhstan. If the purpose of the stay is employment, his/her company must also obtain a work permit.

The citizens of Russia and some other CIS countries (*e.g.*, Belorussia, Kyrgyzstan, Tajikistan and Azerbaijan) are exempted from the requirement to obtain a Kazakhstani visa.

Moreover, Russian, Belorussian, Kyrgyz, Tajik and Azerbaijani citizens may enter and reside in Kazakhstan with their national passports without a Kazakhstani visa for an unlimited period of time.

Ukrainian citizens, except those who have a residence permit, may reside in Kazakhstan without a visa for up to ninety calendar days from the date of entrance to Kazakhstan. If a Ukrainian citizen intends to stay longer, a Kazakhstani visa must be obtained.

Training

Student Visa

Students, including trainees, must obtain a student visa. Student visas are issued on the basis of the visa endorsement of the MFA. The latter is granted on the basis of petition of a respective educational institution.

Employment Assignments

Work Visa

A work visa is required if a foreigner is employed in Kazakhstan. If the foreigner has a family, members of his family are granted a work visa together with the foreigner's application. A foreigner may be hired by a local or a foreign company, but as long as the employment activities are carried out in Kazakhstan, a work visa is required. As mentioned above, a business trip or a series of business trips that exceed in total sixty days per calendar year can trigger the requirement for obtaining a work visa.

In addition to obtaining a work visa, the employer must also obtain a work permit to hire foreign labor for a position and to hire this particular employee. No foreigner can be hired without a work permit.

It is important to consult the specific Kazakhstani Consulate or Embassy abroad where the work visa application will be filed, as the requirements vary from one country to another.

Secondment

There is another option for staying in Kazakhstan for business purposes on a business visa without a work permit or a work visa. A foreign employee may work in Kazakhstan without a work permit for up to 180 calendar days on the basis of a business visa if seconded to a Kazakhstani company by a foreign company. However, the secondment arrangement will not work unless a Kazakhstani employee is seconded to the same foreign company for the same period of time.

Permanent Residence

Permanent residence visas are also issued on the basis of visa endorsement. In addition, permanent foreigners must receive a residence permit, which allows them to reside in Kazakhstan for an unlimited period of time.

Investor Visa

Investors may obtain a one-entry investor visa without any invitations within one day provided there is a solicitation addressed to a Kazakh consulate from foreign companies. Investor visas are granted to the CEOs and representatives of senior management of foreign firms and companies investing in the economy of Kazakhstan, as well as to the members of their families.

Visa obtaining procedures for participants of the Regional Financial Sector of Almaty city (*e.g.*, dealers, brokers and issuers) and members of their families are simplified and they may obtain one-entry and multiple investor visas within 1 and 5 working days accordingly.

Other Comments

Foreigners violating the migration rules may be punished in accordance with Administrative and/or Criminal Law. Depending on the grievance of the violation, a foreign citizen who violates any visa, work permit or migration rules may face the following administrative liability penalties:

- Administrative fine;
- Forced curtailment of stay in Kazakhstan;
- Administrative arrest for up to 15 calendar days; and

- Forced deportation from Kazakhstan.

A foreign citizen may be forcefully deported from Kazakhstan only on the basis of a court ruling. Deported foreigners will not be allowed to enter Kazakhstan for five 5 from the date of deportation.

A Kazakhstani company that violates the work permit or migration rules of Kazakhstan may face one of the following penalties:

- Administrative fine; or
- Suspension or revocation of the work permit issued to the company.

In addition, there is potential criminal liability. If a foreign citizen does not leave Kazakhstan when told to do so by the migration police, the punishment may include:

- Criminal fine;
- Administrative arrest for up to 6 months; or
- imprisonment for up to 1 year.

For intentional illegal crossing of the Kazakhstani border (*e.g.*, without a national passport or a proper visa), a foreigner may be penalized as follows:

- Administrative fine; and
- imprisonment for up to 2 to 5 years.

A company manager who repeatedly violates the work permit rules of Kazakhstan may be penalized as follows:

- Administrative fine; and
- Forced community service work for 100 to 240 hours.

Malaysia

Executive Summary

As the domestic economy continues to enjoy foreign direct investments notwithstanding the current economic climate and with the continued requirement for foreign expertise in Malaysia, Malaysian immigration laws provide a range of visas and passes to non-Malaysians in entering and remaining in Malaysia for business purposes.

Key Government Agencies

While certain government bodies have the authority to approve the employment of non-Malaysians, the Malaysian Immigration Department (“Jabatan Imigresen”) processes all applications for and is the issuing body of all immigration passes and visas. It also enforces immigration laws and policies in Malaysia together with the Royal Malaysian Police Force. Visas are issued by the Malaysian Immigration Department at all points of entry into Malaysia.

Depending on the nationality, it may be necessary to obtain a pre-entry visa. Applications from abroad for visas which permit a longer duration of stay in Malaysia may be sent to a Malaysian embassy/consulate.

Current Trends

Malaysia has always welcomed skilled foreign nationals. The government recognises foreign expertise as instrumental in achieving the goal of the population becoming a high-income one. The government has also continued to implement steps to reduce Malaysia’s dependency on blue collar foreign employees.. While this will largely affect less skilled workers, employers may need stronger justification for bringing in to Malaysia foreign nationals, as a whole,

in the nearer term. It is expected that this may affect certain industries more than others.

Generally, the Malaysian Immigration Department has not unreasonably withheld approvals for skilled foreign employees who will assume managerial, technical or executive posts in Malaysia. A higher success rate in obtaining immigration passes may be seen in certain industries or fields, such as oil and gas, science and medicine, information technology and aerospace.

The Malaysian Immigration Department has continued to improve on its delivery systems. The relative lack of transparency and processing timeframes have been officially acknowledged as impediments to foreign investment..

Having said that and in light of the current economic conditions, the Malaysian Immigration Department is becoming more stringent in respect of approving immigration passes for foreign nationals for employment in the country. This has the indirect purpose of reserving more job opportunities for Malaysians. The government is also looking into various means to encourage skilled Malaysians who are currently working abroad to return. The Malaysian Immigration Department continues to be somewhat unpredictable in requiring applicants to obtain a letter of support or a letter of no objection from government agencies, which may or may not be relevant to the foreign national's industry.

Extensive reform of Malaysia's immigration laws in the near future appears to be unlikely.

Business Travel

Social Visit Pass

For a short stay in Malaysia for social or business purposes, other than for employment, a Social Visit Pass may be obtained at the point of entry into Malaysia. The validity period of the Social Visit Pass varies, depending on the nationality of the traveler. Depending on the nationality, a visa issued from the Malaysian embassy may be required.

The Social Visit Pass is solely for the purpose of a social, tourist or business visits. For business purposes, a person who has been issued with the Social Visit Pass is permitted to carry out the following activities while in Malaysia:

- Attending meetings;
- Attending business discussions;
- Inspection of factory;
- Auditing company's accounts;
- Signing agreements;
- Conducting survey on investment opportunities or setting up a factory; or
- Attending seminars.

The Social Visit Pass does not permit its holder to exercise employment in Malaysia nor to undertake any activity which are outside the scope of the above permitted activities.

As the Social Visit Pass permits its holder to remain in Malaysia for a limited period, Social Visit Pass holders should be mindful of not overstaying the stipulated duration. Generally, extensions will not be granted unless there are special personal circumstances.

Training

Visit Pass (Professional)

Employers who wish to second their non-Malaysian employee to Malaysia on a temporary basis, should arrange for the employee to be issued with the Visit Pass (Professional).

For background, a Visit Pass (Professional) is for engaging in a professional occupation or work in Malaysia. A Visit Pass (Professional) may be used only for secondments; there must be no employee-employer relationship with the local sponsor (the Malaysian entity at which the employee is seconded). Normally, a Visit Pass (Professional) is granted only for a period of 3 to 6 months, but may be extended to a maximum period of eleven months.

The intended holder of a Visit Pass (Professional) must register with the Malaysian Inland Revenue Board before submitting the application.

In the application for a Visit Pass (Professional) submitted by the local sponsor, the local sponsor must disclose the activities that the applicant intends to conduct in Malaysia. The local sponsor must also agree to be responsible for the maintenance and repatriation, should it become necessary. A Visit Pass (Professional) holder may only conduct the activities for which the pass has been approved. It is a condition of the Visit Pass (Professional) that any change in the business or professional purposes for which the Visit Pass (Professional) is issued must be made with the written consent of the Director-General of Immigration.

Employment Assignments

Employment Pass

An Employment Pass is issued to a director, manager or professional-level foreign national who is to be appointed/employed by a Malaysian entity (*i.e.*, Malaysian incorporated subsidiary, Malaysian registered branch of a foreign corporation or a Malaysian representative office). The Employment Pass is valid for two to three years.

Any Malaysian employer applying for an Employment Pass must show why the foreign national must be employed, rather than a Malaysian citizen or permanent resident. An acceptable reason is that there is no Malaysian citizen or permanent resident available who is suitable in terms of academic qualifications and relevant practical experience or technical skills. An Employment Pass will allow the holder to engage in a full range of employment activities.

Application for an Employment Pass should be made 3 months prior to the arrival of the foreign employee. It is common, although not always advisable, for a foreign national to enter on a Social Visit Pass obtained by oral application at the point of entry (or at the relevant Malaysian embassy prior to traveling) and for the employer thereafter to apply for an Employment Pass prior to taking up employment. The Social Visit Pass encompasses the permissible business activities mentioned above and employment is not permitted.

A limited number of Employment Passes may be granted to foreign nationals employed by a Malaysian subsidiary. Generally, the Malaysian Immigration Department is less willing to grant Employment Passes to foreign employees of a branch of a foreign company except with a letter of support from a Ministry or government body, such as where the branch is involved in a government project.

The application for an Employment Pass is a two-stage process:

First, the applicant is required to apply for an expatriate post (an application “for the services of an expatriate”) prior to the application for the Employment Pass, by submitting a completed Form DP 10. This form must be accompanied by a letter of justification in the Malaysian language from the intended employer justifying why the post must be held by a foreigner, whether there are any prerequisites, qualifications, and experience not available in Malaysia and whether steps have been taken to recruit a Malaysian. The letter of justification should indicate the benefits the company and the expatriate could bring to the Malaysian economy and the labour force.

Generally, the application is made to the Malaysian Immigration Department. However, for certain industries, separate government agencies have been authorized to approve the employment of expatriates and applications should be sent to these appointed agencies instead:

- Manufacturing and its related services sectors - Malaysian Industrial Development Authority
- Information technology sector, specifically companies that have been awarded MSC Malaysia (formerly known as the Multimedia Super Corridor) approval - Multimedia Development Corporation
- Financial, insurance and banking sectors - Central Bank of Malaysia
- Securities and the futures market - Securities Commission
- Health and education sectors – Public Service Department of Malaysia

Applications for the above industries may be more expedient. However, sector-specific guidelines and requirements are imposed by the relevant approving agencies.

Second, once approval of the expatriate posting is granted, the application for the issuance of the Employment Pass can be submitted. An application for renewal before its expiry may be submitted but there is no guarantee of approval.

After the Employment Pass is issued, the passport needs to be submitted to the Malaysian Immigration Department for the endorsement of the Employment Pass.

Reference Visa

Nationalities of certain countries are required to obtain a Reference Visa for purposes of employment. The Reference Visa must be applied for and obtained prior to entry into Malaysia. The Reference Visa can be collected from a Malaysian mission in any country once the issuance of the Employment Pass is approved by the Malaysian Immigration Department.

Only holders of passports of Commonwealth countries do not require a Reference Visa for the purposes of employment. Holders of passports of all other countries not listed are required to obtain a Reference Visa prior to entering Malaysia for the endorsement of the employment passes onto the passport.

Visit Pass (Temporary Employment)

A Visit Pass (Temporary Employment) may be obtained where the foreigner is to be employed by a Malaysian entity for twelve months or less. The procedure, timing and the supporting documents to apply for a Visit Pass (Temporary Employment) are generally similar to that for the Employment Pass.

Other Comments

Many holders of the Employment Pass would like to bring their families to Malaysia. Dependant passes are available for the spouse and children below twenty one years of age. Dependant passes should be applied for simultaneously with the application for the issuance of the Employment Pass.

For foreign nationals who are not employed in Malaysia and yet would like to reside in Malaysia, the government of Malaysia has introduced the Malaysia My Second Home Programme (“MM2H”) to encourage non-Malaysians to reside in Malaysia. Non-Malaysians under the programme remain in Malaysia on a Social Visit Pass, together with multiple entry visa.

The Social Visit Pass is valid for ten years, subject to the validity of the passport, with the possibility of an extension for another ten years. Under this programme, qualified MM2H participants aged 50 and above with specialized skills and expertise that are required in the critical sectors of the economy are allowed to work not more than 20 hours per week. Additionally, the MM2H participants are allowed to invest and actively participate in business, subject to existing government policies, regulations and guidelines, which are in force for the relevant sectors. This programme does not guarantee permanent resident status.

There are financial requirements, but participants are also provided with various incentives during their stay in Malaysia under the programme. These include, amongst others, acquisition of residential units, car purchase, education and tax exemptions.

Further Information

Our *Immigration to Malaysia Manual* provides further information relating to residing in Malaysia and citizenship.

Mexico

Executive Summary

This chapter outlines how foreign nationals may remain in Mexican territory under the proper immigration status and category, performing lucrative or non-lucrative activities, according to their purpose to remain in Mexico. Companies and foreign nationals need to know, in a clear and concise manner, the different type of visas and the activities that may be performed with them in Mexico, whether lucrative or not.

To determine the adequate authorization for each activity or business, the type of visa to be secured must be determined, as well as the activities to be performed and, moreover, to specify if the activities that are to be performed are on behalf of a Mexican entity or not. All of this is needed in order to avoid the imposition of fines that apply to the sponsoring company and to the foreign national, or in certain cases, the foreign national's deportation.

Key Government Agencies

The local, state and central offices of the National Immigration Institute (“Instituto Nacional de Migración” or INM), under the Ministry of the Interior (“Secretaría de Gobernación” or SEGOB), hold the power to authorize all kinds of immigration permits after the foreign national's first entry into Mexico, such as the change of immigration status, change of immigration category, renewals, change or extension of activity, and renewed permanence, among others.

The Ministry of Foreign Affairs (“Secretaría de Relaciones Exteriores”) is the authority responsible for granting citizenship through the naturalization process, as well as all communication between the INM and the Mexican Embassies and/or General Consulates. The Embassies and the General Consulates incorporate

them and are authorized exclusively to issue permits to enter the country.

Current Trends

Recently Mexico has been making important changes to the immigration policies in order to secure foreign investment and reduce bureaucratic tendencies in the immigration processes. The INM has issued a new Immigration Manual (“IM”) that came into effect on April 29, 2010. This new IM outlines all immigration processes. Although it was said to be a manual that would reduce bureaucratic tendencies, it has done quite the opposite in most local immigration offices.

The IM did reduce immigration processes and the requirements for processing visas, but also implemented a new system that operates as a national Intranet connection called SETRAM (Spanish acronym for Sistema Electrónico de Trámites Migratorios) which all immigration offices must use and follow. The SETRAM does pose multiple issues, most of them being that immigration officers are having trouble getting used to it.

Other changes have been made on the immigration forms themselves. Passport-type immigration forms have been now changed for card-type forms. This change has obviously been very well received by foreign nationals in Mexico.

These changes have not been validated by a change in Mexico’s Immigration Law (“MII”) or its Regulations (“MILR”). This has also created issues and confusion since some aspects of the IM directly contradict the law. Changes in the MII and MILR are expected for the first months of 2011. We believe these changes will be able to both support and validate the IM, which is very much needed.

Business Travel

There is a new business immigration form called the FMM (Multiple Immigration Form). This form has replaced the previous tourist and business forms. This form is also used for short term non immigrant visits.

As a business form, the FMM allows business travelers to perform the following non lucrative activities while in Mexico: Commercial exchanges of goods and services; establish, develop or administer a foreign capital investment; perform specialized services previously agreed to or contemplated in an agreement for transfer of technology, patents and brands, sale of machinery and equipment, of technical training of personnel, or of any other production process of a company established in Mexico; perform activities on a professional level as stated in the North American Free Trade Agreement; assist in the board or director or board of manager sessions in a company legally established in Mexico; perform managerial, executive or specialized knowledge activities in one of the subsidiaries or affiliates of a company established in Mexico.

The validity of this visa is up to 180 days. If the foreign national wishes to prolong presence in the country, then an application should be filed for an FM-3 card.

It is possible to request a new FMM each time the foreigner enters the country. It is important that the foreign national return the FMM to any immigration authority before its expiration date and upon their definitive exit of the country; otherwise, they may be subject to an administrative sanction.

Classification of Nationalities

Group I and II – Foreign Nationals that require a visa prior to traveling to Mexico

Citizens from the following countries must request a visa from the nearest Mexican Embassy or General Consulate before entering Mexico. Mexican Embassies and Consulates are allowed to issue certain visas to foreign nationals.

Afganistán	Albania	Angola	Antigua y Barbuda	Arabia Saudita	Argelia	Armenia
Azerbaiyán	Bahrein	Bangladesh	Belarús	Benin	Bolivia	Bosnia-Herzegovina
Botswana	Brasil	Brunei Darusalam	Burkina Faso	Burundi	Bután	Cabo Verde
Camboya	Camerú	Chad	China República Popular	Colombia	Comoras	Congo
Congo, Rep. Dem. (Zaire)	Corea del Norte	Costa de Marfil	Cuba	Djibuti	Dominicana República	Egipto
Emiratos Árabes Unidos	Eritrea	Etiopía	Federación Rusa	Fiji Islas	Filipinas	Gabón

Gambia	Georgia	Ghana	Grenada	Guatemala	Guinea	Guinea Bisau
Guinea Ecuatorial	Guyana	Haití	Honduras	India	Indonesia	Irak
Irán	Jordania	Kazajistán	Kenia	Kirguistán	Kiribati	Kuwait
Laos	Lesotho	Libano	Liberia	Libia	Macedonia	Madagascar
Malawi	Maldivas	Mali	Marruecos	Mauricio	Mauritania	Mianmar
Moldova	Mongolia	Montenegro	Mozambique	Namibia	Nauru	Nepal
Nicaragua	Niger	Nigeria	Omán	Pakistán	Palestina	Papua Nueva Guinea
Perú	Qatar	República Centroafricana	República Árabe Saharaui Democrática	Ruanda	Salomon Islas	Samoa Occidental
San Cristobal y Nieves	San Vicente y Las Granadinas	Santa Lucía	Santo Tome y Príncipe	Senegal	Serbia	Seychelles Islas
Sierra	Siria	Somalia	Sri Lanka	Sudáfrica	Sudán	Surinam

Leona						
Swazilandia	Tailandia	Taiwán	Tanzania	Tayikistán	Timor Oriental	Togo
Tonga	Túnez	Turkmenistán	Turquía	Tuvalu	Ucrania	Uganda
Uzbekistán	Vanuatu	Vietnam	Yemen	Zambia	Zimbawe	

* Citizens from some of the aforementioned countries require that a Mexican sponsor request a previous entry permit before the INM prior to the foreign national entering Mexico. The INM does not publish the list of nationalities that require the previous entry permit, so information must be consulted case by case. No foreign national in this classification will be granted a visa and allowed entry into Mexico without this special permit.

Group III - Countries with visa waivers.

Citizens from the following countries do not require any visa or special documentation before entering Mexico.

Alemania	Andorra	Anguila	Antillas Holandesas	Argentina	Aruba	Australia
Austria	Bahamas	Barbados	Bélgica	Belice	Bulgaria	Canadá
Chile	Chipre	Corea del Sur	Costa Rica	Dinamarca	Eslovaquia	Eslovenia

España	Estados Unidos de América	Estonia	Finlandia	Francia	Gibraltar	Grecia
Groenlandia	Guadalupe	Guayana Francesa	Hong Kong (Rep. Popular de China)	Hungría	Irlanda	Islandia
Islas Azores	Islas Bermudas	Islas Caimán	Islas Cocos	Islas Cook	Islas Faroe	Islas Guam
Islas Malvinas	Islas Marianas	Islas Marshall	Islas Navidad	Islas Niue	Islas Norfolk	Islas Pitcairn
Islas Reunión	Islas Vírgenes de los EUA	Islas Wallis y Futura	Islas Vírgenes Británicas	Israel	Italia	Japón
Letonia	Liechtenstein	Lituania	Luxemburgo	Macao (Rep. Popular de China)	Mahore	Malta
Martinica	Micronesia	Mónaco	Montserrat	Noruega	Nueva Caledonia	Nueva Zelanda
Países Bajos (Holanda)	Palau	Panamá	Paraguay	Polinesia Francesa	Polonia	Portugal

Puerto Rico	Reino Unido de la Gran Bretaña	República Checa	Rumania	Samoa Americana	San Marino	Santa Helena
Singapur	Suecia	Suiza	Territorio Británico del Océano Índico	Tokelau	Trinidad y Tobago	Turcos y Caicos
Uruguay	Venezuela	El Salvador *	Jamaica *	Malasia *		

(*) Even though citizens from these three marked countries do not require visa before entering Mexico, they do need to obtain a Consular seal on the passport from the nearest Mexican Consulate prior to traveling to Mexico.

As described above, nationals of countries for groups I and II must request a visa before entering Mexico, either at any of the Consular offices abroad or directly at the INM through a sponsoring party. Nationals of these countries may be issued a Consular Visa attached to their passport. Upon entry into Mexico, foreign nationals will receive an FMM authorized for up to 180 days, or an FMM that will need to be changed at the INM for an FM-3 card within 30 days of entering Mexico, depending on the authorization granted on the Consular Visa.

Training

Although Mexico does not have a specific visa intended for training or training programs, an authorization may be issued for these purposes. Foreign nationals who wish to enter the country for training purposes must request an FM-3 nonimmigrant card.

This visa may be requested as a nonimmigrant student when the training program is a prerequisite at a university in order to formalize studies in the foreign national's country of origin, or it may be requested as a nonimmigrant visitor when a company wishes to transfer personnel from one related company to another for training.

This visa may be requested at Mexican consular offices abroad when required as a prerequisite for a university, or may be requested at the INM through a change of immigration status or a previous entry permit.

Employment Assignments

FM-3 for Nonimmigrants

FM-3 nonimmigrant status can be issued to a foreign national who, pursuant to a valid permit issued by the INM, is temporarily admitted to Mexico for any of the purposes listed below.

An FM-3 card may be obtained by processing a change of immigration status, a previous entry permit, or through an authorization issued by a Mexican Consulate.

An FM-3 may be authorized for up to 365 days, and may be renewed up to four times.

Technician or Scientist Visitor

Technicians and scientists can secure the FM-3 if coming to:

- Begin a specific investment project;
- Advise public and private institutions;
- Prepare and direct investigations;

- Hold conferences, courses or divulging some type of knowledge;
- Carry out technical activities in the elaboration of an investment project;
- End or start the operation of the construction of a plant;
- Assist other technicians having previously entered into a services agreement; or
- Carry out activities contemplated in an agreement of transference of technology, patents or labels.

Professional Visitor

The FM-3 is also used by foreign professionals coming in the exercise of a profession, either: in an independent manner; rendering a service to a corporation; or rendering services to public or private institution.

In order for a foreign national to carry out the profession in Mexico, registration is required before the Ministry of Education (“MOE”) of the certificates of showing professional studies and diplomas. These certificates must be dully legalized and translated into Spanish by a translator authorized by the Supreme Court. The MOE is authorized to grant the proper registration of the Professional Title and Professional ID card, so that the foreigner’s profession may be accredited and may be carried out in Mexico.

Director and Manager Visitor (Trustworthy Position)

The FM-3 can be issued to foreigners coming to perform directionary positions or as a sole administrator, or other positions that require the absolute confidence and trust of the company or institution established in Mexico, provided that, at its discretion, the SEGOB determines that

there is no duplication of jobs and that the managerial or executive position truly requires a foreigner.

Member of a Board of Directors

Foreign national coming to attend board of directors meetings and corporate shareholders assemblies may apply for the FM-3.

In order to gain authorization for this characteristic and category, foreign nationals must present evidence of their authorization as board members issued by a board member meeting. Status is authorized for up to 1 year and is renewable up to 4 times, with multiple entries and exits. The only condition for this document is that the foreign national's stay in Mexico cannot exceed thirty days for each entry.

FM-2 for Immigrants

The FM-2 is appropriate for foreigners coming to Mexico for the purpose of remaining in the country for long periods of time and who seek permanent residency. Further, foreigners who hold FM-2 status for 5 consecutive years may apply for permanent resident status. FM-2 status is also required in order to apply for Mexican citizenship.

FM-2 status is granted for 365 days, and may be renewed up to 4 times. Foreigners maintaining FM-2 status must prove that they are in full compliance with the conditions imposed upon their admission to the country, and in compliance with the conditions established by the applicable laws, in order to request the renewal of the immigration document annually, if approved.

FM-2 cards may be obtained through a change of immigration status, or through a previous entry permit.

The FM-2 is available to investors, professionals, directors and managers (trustworthy positions), scientists, artists and athletes, and technicians categories.

Immigrants may also enter the country as “Assimilated Immigrants,” which refers to foreign nationals who enter the country to perform any allowed and honest activity, when they have been assimilated to the average national or have or had a Mexican spouse, son or daughter, so long as they are not included in the previous characteristics in the terms that the MIL or the MILR establishes.

Other Comments

Mexican Entities Receiving Services from Foreign Employees

Federal Labor Law protects the economic development of the country and the Mexican workers. For that purpose, all companies or businesses are obligated to at least employ 90% of Mexican workers.

In the technical and professional categories, the employees must be Mexican citizens with the exceptions when there are no specialized employees in that field; in such case, the employer could temporarily hire foreign employees, provided that they do not exceed 10% of the total workforce. The employer and foreign employees in the technical and professional categories have the joint liability of training the Mexican employees in their specialty. In addition, company physicians must be Mexican citizens.

Note that these rules are not applicable in the case of foreign general managers and corporate officers.

Basic File

A company or institution that has foreign nationals rendering services may request the INM to open a “Basic File,” which shall be

incorporated with the information of the company or institution and the Mexican and foreign employees that work for it. This information must be updated periodically. In some cases, local INM offices may request that a Basic File be incorporated in order to process authorizations for foreign nationals, as a prerequisite.

Special Considerations

The law provides that companies or institutions that have foreign employees rendering services are obligated to confirm that they have all the immigration documentation that certifies their legal stay in the country and that they are authorized to perform their activities in national territory. Otherwise, the company and the foreign national may be subject to a sanction.

Any changes of activities or employers must be previously authorized by the INM, otherwise, companies and foreign nationals are also subject to administrative sanctions, or even deportation.

Additionally, the Mexican company or institution that has foreigners rendering services, whether they are its employees or not, have a joint liability toward them, and in its case, the company will be obligated to cover all expenses and sanctions that apply, even the deportation expenses.

When a foreign company employs a foreign national to render services in Mexican territory, it's recommended to request that all documentation specifies the relationship between the foreign national and the foreign company, with the purpose of avoiding a labor relationship tie between the foreign employee and the Mexican company or institution, and thus avoid any further contingency.

Cancellation or Discharge of Immigration Authorization

The law provides that any company or person having a foreign national at their service or under its economic dependency, are obliged to inform the INM, when the conditions to which the foreign national is subject are to cease, or are not satisfied or complied with, within fifteen days of such event.

It is very important for companies or persons to which the foreign national provides a service to notify the INM when such state of affairs has ended. In this form, they will properly fulfill their obligation established by law; and also, they will cease to stand as jointly liable regarding the foreign national's immigration status.

Further Information

Baker & McKenzie's ***Mexico Immigration Manual*** provides further information about Mexican business visas, including a broader range of nonimmigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Kingdom of The Netherlands

Executive Summary

Under Dutch immigration law, there are various procedures available in order to obtain the required work- and residence permits for foreign employees. These procedures range from temporary business visa to permanent residence permits. Often more than one procedure is worth consideration. Requirements and processing time vary by procedure.

Key Government Agencies

The Ministry of Foreign Affairs issues visas through Dutch embassies and consulates around the world.

The Immigration and Naturalization Service (“Immigratie- en Naturalisatiedienst” or “IND”) is part of the Ministry of Justice and, in general, is responsible for the decision in the visa applications and residence permit applications.

The Public Employment Service (“UWV WERKbedrijf”) handles work permit applications, with investigations and enforcement actions involving employers and foreign nationals being the particular focus of the Labour Inspectorate.

Current Trends

In a bid to have a modern immigration policy based on the participation of migrants in the Dutch society, immigration regulations are changing rapidly.

A new Act has been passed (and is expected to take effect on January 11, 2011) making the Netherlands more attractive to those whom are urgently needed to help strengthen the Dutch economy. The Act will

introduce a simplification of the residence permit procedures and will reduce the administration burden for companies.

The government envisages that the new immigration policy facilitates a quick and alert reaction to the needs of the society and labor market, as well as an optimization of the possibilities that immigration offers. The contribution of the migrants to Dutch society is the basic element in the new regulations.

Business Travel

Not exceeding three months

Foreign nationals coming to the Netherlands from most countries are generally required to have a tourist or a business visa to enter the Netherlands. It is advisable to check with the Dutch embassy or consulate to confirm whether a visa is required, since the countries qualifying for visa waiver can change.

The visa is issued for a maximum period of 90 days, and is not extendible. Furthermore the holder of the visa may remain no longer than 90 days within 180 days within the Schengen Area, whose member states include: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden and Switzerland.

Visa Waiver

Passport holders of the following countries do not require a visa for a stay of ninety days or less: Andorra, Argentina, Austria, Australia, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany (Federal Republic), Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Liechtenstein, Lithuania,

Malaysia, Malta, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, United Kingdom, United States of America, Uruguay, Vatican City, and Venezuela.

Temporary Stay (MVV) Visa

A foreign national intending to remain in the Netherlands for more than 3 months must apply for a residence permit. The conditions for obtaining a residence permit depend entirely on the purpose of coming to the Netherlands. A foreign national wishing to work in the Netherlands must, usually, obtain three types of documents:

- A temporary residence permit (“Machtiging tot Voorlopig Verblif” or “MVV”), which enables the holder to enter the Netherlands. An MVV is not required for citizens of the European Economic Area, the European Union and Switzerland, Japan, Canada, Australia, United States, Monaco, and New Zealand. Foreign nationals in the possession of these nationalities may enter the Netherlands without an MVV or business visa and may apply for a residence permit;
- A residence permit, which enables the holder to live in the Netherlands; and
- Under certain conditions, a work permit, which enables the holder to work in the Netherlands.

The foreign national can apply for the MVV visa in the country of residence, or the employer in the Netherlands or the person with whom the foreign national will be staying in the Netherlands can file the application in the Netherlands.

Processing takes between two weeks to six months, depending on the purpose of stay. For employment purposes, and if the Dutch employer applies by means of the expedited procedure, the MVV will usually be granted within 2-3 weeks. During the MVV procedure, the foreign national is not allowed to enter or reside in the Netherlands.

Residence permit

A foreign national who intends to stay in the Netherlands for more than 3 months and who has gained entrance to the Netherlands, is required to obtain a residence permit (“verblijfsvergunning”). A residence permit will not be granted if the foreign national was first required to obtain an MVV.

The residence permit is generally issued for a maximum of 1 year and if no changes of circumstances have occurred, it is extendible on a yearly basis. After having been in the possession of a residence permit for 5 years, the foreign national may apply for a permanent residence permit. This permanent residence permit is renewable every 5 years.

Training

A trainee is a foreign employee that will receive on-the-job training for a maximum period of twenty four weeks. The purpose is to allow foreign nationals to receive training and experience abroad that is required for their function back in their home country.

A work permit application must be filed with the UWV. A detailed training program must be presented as well as declarations from the employer and the Dutch company that the trainee will not fulfill a vacancy in the Netherlands. Compensation for the training is required.

As soon as the foreign employee has gained entrance to the Netherlands and, if intending to remain for a period longer than 3 months (and up twenty four weeks), a residence permit application must be filed. This residence permit will be granted as soon as the work permit has been issued.

Employment Assignments

An employer who wants to recruit an employee from outside the European Union (“EU”) or European Economic Area (“EEA”) usually needs to apply for a work permit for that employee. The Netherlands has temporarily opted out for the full mobility of the workforce in respect of two new EU members (Romania and Bulgaria), which means that those nationals require work permits.

There are different procedures for the work permit applications. The applicable procedure depends entirely on the applicant’s specific circumstances, the nature of the current employer abroad, and the nature of the company offering the work in the Netherlands.

Generally, the Dutch employer must prove that the labor market has been scanned for workers who have priority. In this respect, the employer must prove that the vacancy has been reported to the UWV and, usually, to the European Employment Service (“EURES”) for at least 5 weeks prior to the work permit application. Furthermore, the employer is required to advertise the job in a Dutch national newspaper, a professional journal, and must have engaged a recruitment office. If a company is unsure whether it must report the vacancy, the company is advised to consult an attorney. In order to avoid unexpected refusals, companies should be cautious about assuming that a job does not need to be reported to the various authorities.

The application procedures for different types of employment require extensive preparation. This is not only necessary for the application

as described above, but also for those who want to stay in the Netherlands as self-employed, for those who want to work in a university, the field of sports, or elsewhere.

The different types of procedures for which a recruitment period as stated above is not necessary, are mentioned in the below paragraphs.

Intra-company Transfer

Multinational companies seeking to temporarily transfer foreign employees to the Netherlands can do so under the intra-company transfer, if:

- The employee will receive an annual salary of at least € 50,183;
- The multinational company has affiliates in at least two different countries; and
- The multinational company has a worldwide turnover of at least € 50 million.

The work permit application generally takes between 3-5 weeks (nearer to 3 than 5 weeks) and will be valid for a maximum of three years. The residence permit will be granted within six months after the approval of the work permit and is valid for one year. The residence permit can be extended on a yearly basis as long as all the conditions (intra-company transfer) are still met with. As soon as the foreign employee has been in the possession of work and residence permits for three consecutive years, work in the Netherlands is permitted without having to be in the possession of a work permit.

The spouse or partner of the foreign employee may only work if their employer is in the possession of a work permit.

Customer producer relationship

The “customer producer relationship” allows foreign nationals to work in the Netherlands on a work permit if:

- There is not an actual employer in the Netherlands, but only a customer;
- The employee will be sent to the Netherlands in order to supply/adapt/install goods on a contract basis as well as provide instructions on the use of the goods;
- The employee has been employed for at least one year;
- The salary of the employee is less than the value of the supplied goods; and
- The supplied goods must be produced primarily by the employers company.

The work permit application will take 3 to 5 weeks and the work permit will be valid for a maximum of 3 years. The residence permit will be granted within 6 months after the approval of the work permit and is valid for 1 year. The residence permit can be extended on a yearly basis as long as all the conditions are still met. As soon as the foreign employee has been in the possession of work and residence permits for 3 consecutive years, work in the Netherlands is permitted without having a work permit.

The spouse or partner of the foreign employee may only work if their employer is in the possession of a work permit.

Knowledge Migrant

As of 2004, skilled and highly educated foreign workers do not require work permits for employment. In order to define the so-called

“knowledge migrant,” the choice has been made for one objective criterion - the salary. A knowledge migrant is a foreign national who will be employed in the Netherlands and receives an annual salary of at least € 50,183 or € 36,801 if age 30-years or younger.

An important requirement is that the Dutch affiliate must be admitted to the knowledge migrant regulation. The IND will first investigate whether there are any objections to the admittance of the affiliate. This procedure takes approximately 2-3 weeks after the IND has received a complete request for admittance.

After admittance, the Dutch affiliate may apply for the residence permits for employees who fulfill the salary criterion. The employee will receive a residence permit for five years, assuming that the passport and employment contract are valid for at least five years. Should this not be the case, then the residence permit will be issued for the shortest validity period mentioned in the employment contract or passport.

The employee may start working in the Netherlands upon receipt of the decision in the residence permit application. The spouse or partner of the employee may work in the Netherlands without a work permit as soon as the residence permit of the spouse or partner has been granted.

Self Employment

A foreign national can be classified as a self-employed person upon proof:

- Of ownership of more than 25% of the shares in a Dutch limited liability company or if the sole owner of a company; and

- That an essential Dutch interest will be served. This latter requirement is extremely difficult to fulfill and, as such, residence permits as a self-employed person are rarely issued.

Although a work permit is not required, a residence permit is. The residence permit will be issued as long as the company serves an essential Dutch interest. Furthermore, the IND expects that the business will provide the foreign national with sufficient long-term means of support.

Dutch-American Friendship Act

Under the Dutch-American Friendship Act, US citizens are allowed to remain in the Netherlands as a self-employed person without having to serve an essential Dutch interest. To qualify, the US citizen must be coming either to conduct trade and activities related to this trade between the Netherlands and the US or engage in a professional practice in which a considerable amount of money has been invested. In this context, it should be noted that “professional practice” does not include the free profession (*i.e.*, lawyers, dentists, doctors *etc.*).

The amount of money that is brought into the company is one of the determining factors as to whether or not to grant the residence permit. The following is applicable:

- General partnership (“vennootschap onder firma”). At least 25% of the firm capital, with a minimum of € 4,500;
- Limited partnership (“vennootschap onder commandite”). For the managing partner, the same as the general partnership is applicable. Since the limited partner cannot be classified as a self-employed person under Dutch immigration law, limited partners cannot qualify;

- Private company with limited liability (“Besloten vennootschap”). At least 25% of the firm capital. The firm capital in the Netherlands must be at least € 18,000, so that the substantial capital must be at least € 4,500;
- Corporation (“Naamloze vennootschap”). At least 25% of the firm capital is at least € 45,000). The substantial capital must be at least € 11,250; or
- One-man operation. A minimum investment of € 4,500.

Other Comments

In addition to the employment-based permits, immigration to the Netherlands is possible through family-based immigrant permits or exchange programs.

Immigrants to the Netherlands are often interested to become Dutch citizens. This is possible after they have been in the possession of a Dutch residence permit for five consecutive years.

New Zealand

Executive Summary

With the current unemployment in New Zealand transferring of employees has to be justified by either being international transfers of key people and skills in order that it can be seen that the vacant position is not disadvantaging a New Zealand resident or citizen.

New Zealand does have skill shortages but these are not numerous currently. International employers who have a company or subsidiary registered in NZ do consider joining an elite group known as accredited employers to overcome difficulties with Immigration. Business owners have good opportunities of gaining Residence in NZ. Investors are also welcomed with a number of different categories available.

Key Government Agencies

Immigration New Zealand under the Department of Labour is the Government department responsible for migration and entry into New Zealand. NZ Customs also have a role to play with some strict criteria relating to the movement of migrant household goods into the country.

Warning: Total lack of consistency of information provided by Immigration New Zealand between case officers and branches. Care needs to be taken that the right path is taken to avoid declines.

Inland Revenue is the Government tax department.

The Department of Internal affairs handles citizenship and the registration of births deaths and marriages.

Current Trends

The New Zealand Government has put emphasis on attracting migrants with the right qualification and experience to fill the skill shortage. In a country growing as quickly as New Zealand, there is an ongoing need for highly skilled and educated workers. As a way of encouraging such workers to make New Zealand their new long-term home and place of employment, New Zealand has streamlined the application and acceptance procedures for individuals and families that meet the criteria of what is called the “Skilled Migrant Category”.

The number of people approved for residence in the 2009/10 financial year to date was 41,466 compared with 41,588 for the same period in 2009. Immigration NZ is on target to meet the NZ Residence Policy Programme at the lower end of the 45,000 – 50,000 range. 81% of skilled Migrant Category principal migrants were approved with a skilled job or offer, while 86% were approved onshore.

Work approval numbers in the financial year to date were down 5% on last year. The number of applications through the labour market tested Essential Skills policy is down 27% compared to the same period last year. However, the decline rate for people applying through the Essential Skills Policy has leveled out so more applicants are being approved.

Net migration is expected to continue rising over the next twelve months, providing positive support to the domestic economy, particularly housing and construction activity.

New Zealand’s Immigration department has also combined the Long Term Skills Shortage List (LTSSL) with the Immediate Skills Shortage List (ISSL) to create the Essential Skills in Demand List, through which LTSSL categories and ISSL categories can be viewed together or separately. The lists help potential migrants determine which visa entry category is most applicable, based on experience and skills relevant to particular industries and regions.

Business Travel

People from some countries do not need a visa to enter New Zealand for business trips, however they can only attend meetings or be visiting on a look see visit to fall under this category. Short visits are visiting for 3 months or less and are from a country in the list below, other requirements may apply.

Andorra	Argentina	Austria
Bahrain	Belgium	Brazil
Brunei	Bulgaria	Canada
Chile	Cyprus	Czech Republic
Denmark	Estonia	Finland
France	Germany	Greece
Hong Kong	Hungary	Iceland
Ireland	Israel	Italy
Japan	Korea (South)	Kuwait
Latvia	Liechtenstein	Lithuania
Luxembourg	Malaysia	Malta

Mexico	Monaco	Netherlands
Norway	Oman	Poland
Portugal	Qatar	Romania
San Marino	Saudi Arabia	Singapore
Slovak Republic	Slovenia	South Africa
Spain	Sweden	Switzerland
United Arab Emirates	United States of America	Uruguay
Vatican City		

Employment Assignments

Limited Purpose

An individual who does not meet all the requirements for a specific purpose or visit can, at the indulgence of Immigration NZ, be issued a Limited Purpose visa. The limited time would be for twelve months or under. The individual would have to leave the country on conclusion of the specified period without eligibility to extend.

Specific Purpose

An individual is required in the country for a period of limited time to work on a specific job within the company's employment. The

limited time depends on the time frame of the project. This permit can be extended if extra time is required to complete the specific reason they are being brought in for or changed to another visa once they are in NZ. Commonly used as inter-company transfers

Essential Skills

Essential Skills will differentiate between occupations on the basis of skill level. For an individual to gain a permit under this category, it must be proven that:

- there must be no New Zealand workers available before an employer is allowed to recruit an overseas worker; and
- the terms and conditions of employment, including the paid hours of work, meet those of the New Zealand market and NZ Labour Laws.

Work to Residence Visa/Permit

The Work to Residence category provides a temporary work visa and/or permit as a step towards gaining permanent residence. Applicants may be qualified in occupations that are in demand in New Zealand, or may have exceptional talent in sports culture or the arts.

Talent (Accredited Employers)

The objective of the Talent (Accredited Employers) Work Policy is to allow Accredited Employers to supplement their own New Zealand workforce in their core area of business activity through (1) the recruitment of workers who are not New Zealand citizens or residents whose talents are required by the employer and (2) the accredited employer having direct responsibility for those employees and their work output.

Talent (Arts, Culture and Sports)

This category is for individuals with an exceptional talent in a declared field of art, culture or sport. It requires proof of:

- An international reputation and record of excellence in the declared field,
- Prominence in the declared field; and
- That the individual's presence in New Zealand will enhance the quality of New Zealand's accomplishments and participation in the declared field of art, culture or sport.

Long Term Skills Shortage List (LTSSL)

The Long Term Skill Shortage List (LTSSL) is a list of occupations in which Immigration New Zealand, in consultation with Industry New Zealand, relevant industry groups and unions, has identified an absolute (sustained and ongoing) shortage of skilled workers.

Long Term Business (LTBV)

With the exception of two categories under the Investor, this is the only policy leading to permanent Residence that has no age limit.

The Long Term Business Visa and Permit (LTBV) category caters for self-employed business people who are interested in either: applying for residence under the Entrepreneur category, or establishing a business in New Zealand but without living permanently in New Zealand.

The Work to Residence category allows for a temporary work visa and/or permit as a step towards gaining permanent residence. Applicants may be qualified by experience in occupations that are in

demand in New Zealand, or may have exceptional talent in sports or the arts.

Entrepreneur Plus

Originating from the Long Term Business Visa, proving you have successfully established a business in NZ, investing at least NZ\$0.5 million in the business, working in the business and creating 3 full time positions for NZ Residents or Citizens – residence can be obtained more quickly.

Residence Visa/Permit

New Zealand is looking for skilled migrants with the right qualifications and experience, and English language proficiency, to fill skill shortages and to help the country grow and prosper in the future.

Skilled Migrant Category

The Skilled Migrant Category for residence allows skilled migrants to become permanent residents. It is the main path to residence in New Zealand. Approximately 70% of places under the New Zealand Government's residence programme are allocated to Skilled Migrant applicants.

Additional Paths to Residence

- Investor 1 Or Investor Plus. Investing NZ\$10 million for 3 years, spending 20% of your time in each year or 73 days in NZ – residence path.
- Investor 2. Prove you have a minimum of 3 years business experience, provide evidence of NZ\$1 million to invest over a 4 year period, plan on spending 146 days or more of each

calendar year in NZ, be 65 years of age or younger – path to residence.

- Extend your Visit. if 66 years of age or over.
- Temporary Retirement Category. Visitors who want to stay longer in NZ can apply for a 2 year multiple entry visitor's visa. This approach is for applicants aged 66 and over. Required to hold comprehensive travel and/or health insurance for the duration of the stay.

Other Comments

A new Immigration Act is coming into force with core provisions applicable from 29 November 2010. Other sub sections coming into force from mid 2011 and beyond.

It is most common that travelers to New Zealand do not understand the difference between immigration visas and permits. A visa is given to an approved person so they can travel to New Zealand. A permit allows a person to enter and remain in New Zealand and can either be stamped on your passport upon arrival or a label printout. A person can stay in New Zealand until the expiry date on their permit. All permits expire when the person leaves New Zealand and a valid visa is required to come back to New Zealand.

The New Zealand Government has recognized the need and importance of migrants receiving expert and professional immigration advice and has, specifically for this purpose, enacted legislation that requires all immigration advisers practicing or giving New Zealand Immigration advice and/or assistance with completion of documentation to be licensed (unless exempt) from May 2009. Licensing for Immigration Advisers. This new law is defined in the Immigration Advisers Licensing Act (IALA) which is managed by the Immigration Advisers Authority (IAA).

Similar to United Kingdom and Australia, Working Holiday Visas are available to nationals of certain countries and permit the holder to work for periods of 6 to twelve months depending on your country of citizenship while on holiday in New Zealand. Applicants must be under the age of thirty.

All Migrants entering NZ are subject to health and character checks.

An offence occurs should a migrant be employed in NZ beyond the period of the permit or should the migrant change employers or job or location without applying for a variation of conditions.

NZ employers are subject to large fines for employing a person without a valid work permit.

Accompanying Family Members

For any accompanying family members of the principal applicant:

- The partner of the principal applicant is entitled to an open work permit to work in any occupation; and
- for any tertiary education undertaken by family members, they will be subject to the payment of International fees until such time as the permanent residence is granted.

The People's Republic of China

Executive Summary

The People's Republic of China ("PRC") is the number one destination for multinational companies. From business trips to negotiate customer contracts to employment assignments to manage subsidiary manufacturing operations, most human resource managers must eventually, if not frequently, deal with PRC visa and immigration issues.

To encourage economic growth and firmly establish its role in international markets, the PRC has comprehensive laws and regulations governing foreign nationals coming to do business. While the laws are generally national in scope, practice and procedure are often dictated by local government offices, giving rise to significant variation within the country.

The Special Administrative Regions (e.g., Hong Kong and Macao) have retained their own immigration systems. Hong Kong is discussed in a separate chapter.

Key Government Agencies

The Ministry of Foreign Affairs operates the PRC diplomatic missions, consular posts, and other agencies abroad, which are responsible for processing visa applications.

The Divisions of Exit and Entry Administration of local Public Security Bureaus ("PSB"), which are under the Ministry of Public Security, are responsible for processing extension or change of visa applications domestically. The PSB is also responsible for processing foreigners' Residence Permit applications.

The local labor administrative authorities, which are under the Ministry of Human Resources and Social Security, are responsible for the administration of the employment of foreigners, as well as Hong Kong, Macao, and Taiwan (“HMT”) residents and overseas Chinese (i.e., PRC nationals with permanent residency in foreign countries).

The State Administration Bureau of Foreign Experts Affairs and its local counterparts are responsible for processing Foreign Expert Certificates, which give qualified foreigners the authorization to work in the PRC in lieu of Employment Permits.

Current Trends

In January 2010, the PRC authorities introduced new measures to tighten its administration of the Representative Offices of foreign enterprises. Among other things, these measures limited the number of a Representative Office’s representatives (inclusive of the chief representative) to four. Because foreign workers may only work at Representative Offices as representatives, the practical impact is to cap the number of foreigners that may staff a Representative Office to four.

Because local rules and policies governing foreigners’ Employment and Residence Permits vary by city and can change on a regular basis, implementation of these new measures on the local level may also vary. Representative Offices otherwise remain under scrutiny by the authorities. For example, in Beijing, the Public Security Bureau has been auditing an increasing number of Residence Permit applications sponsored by Representative Offices of foreign enterprises. The Public Security Bureau will not disclose the scope of each audit review or the audit triggers. The audits may include an on-site inspection and a request for proof of a Representative Office’s proper corporate registrations.

Business Travel

Business Visa

Foreigners who travel to the PRC for business visits, for speaking engagements, or to exchange knowledge on scientific and cultural topics, should apply for an F visa

Foreigners should generally apply for an F visa at PRC consular posts, many of which now require an original visa notification letter issued from an authorized government unit in the city where the foreigners will visit. Normally, there are three types of F visas which can be obtained.

Type (or number) of Entry	Validity	Duration of Stay Per Visit
Single	30 or 90 days	30 or 90 days
Double	90 days	30 days
Multiple	180 or 365 days	30 days

Visa Waiver

Currently, nationals of Brunei, Japan and Singapore may enter and stay in the PRC for a period of not more than 15 days without applying for a visa for the purpose of tourism, business, visiting relatives or friends, or transit.

Training

F Business Visa

There is no specific visa designed exclusively for training. Foreigners coming to the PRC for training of less than six months may apply for an F visa. They may not be compensated locally and are not authorized to engage in productive, on-the-job training.

Employment Assignments

Z Work Visa

Foreigners who wish to work in the PRC should apply for a Z work visa. In addition, they need to secure an Employment Permit (or a Foreign Expert Certificate) and Residence Permit after entering the PRC on the Z visa.

Before a foreigner may apply for a Z visa, the PRC host entity (typically, the employer) should first sponsor the foreigner for an Employment License or, under certain circumstances, a Foreign Expert License. Either the Employment License or the Foreign Expert License will be submitted to a relevant authority for the issuance of a Visa Notification Letter to support a single-entry Z visa application, as described below.

Employment License

Under relevant regulations, foreigners seeking employment in China should meet the following conditions:

- Be 18 years of age or older and in good health;
- Have professional skills and job experience required for the intended employment;

- Have no criminal record;
- Have a clearly-defined employer; and
- Have a valid passport or other international travel document in lieu of the passport.

In principle, foreigners who meet the above conditions are eligible to apply for an Employment License. However, the local labor authorities may interpret the above conditions according to their own practice. For example, applications from foreigners over the age of 60 are in general not entertained. In many cities, a university degree plus two years relevant work experience are deemed to be the minimum requirement for a foreigner applying for an Employment License. In some locations, the foreigner even has to assume a managerial-level position or a post requiring special knowledge to be qualified for an Employment License.

The applicant is also required to undergo a medical examination. If the examination is completed at an approved hospital overseas, the medical report can be forwarded to the relevant health center in the PRC for verification. However, health centers in the PRC sometimes refuse to verify overseas medical reports and require the applicant to complete a new medical examination in the PRC. Accompanying dependents 18 years and over also must complete medical examinations.

It is not necessary for a Resident Representative Office of a foreign enterprise to apply for an Employment License when appointing a foreigner as its Chief Representative or Representative in the PRC. The Representative Office must, however, seek authorization from the appropriate “approval authority” and register such approval, generally with the Local Administration for Industry and Commerce (“AIC”). Upon registration, a Working Card (also known as a “Representative Certificate”) will be issued to the Chief Representative and each of the

other Representatives. As noted above, Representative Offices may only register up to four Representatives.

Upon the issuance of an Employment License or a Representative Certificate, the PRC host entity may then apply for a Z Visa Notification Letter from the relevant authority - usually the local commerce bureau or the local commission of commerce. If the foreigner will be accompanied by family members (e.g., spouse, parents or children under 18), Z Visa Notification Letters should be obtained for them as well.

The Foreign Expert License

The Foreign Expert License is issued by the PRC National Foreign Expert Bureau or its local counterparts. Foreigners who apply for the license must be in good health, with no criminal record and meet the definition of one of the following categories:

- Foreign professional technical or administrative personnel who work in China to implement agreements between governments or international organizations.
- Foreign professional personnel in the areas of education, scientific research, news, publishing, culture, art, or health or sport. The foreigner should also have a degree higher than a bachelor's degree and more than five years working experience. For language teachers, a degree higher than a bachelor's degree and more than 2 years of working experience is required.
- Foreigners who hold a position higher than Deputy General Manager, or foreign senior professional technical or management personnel who enjoy the same treatment in enterprises in the PRC. The foreigner should also have a

degree higher than a bachelor's degree and more than five years of working experience.

- Foreign representatives of overseas expert organizations or agencies for talented people.
- Foreign professional technical or management personnel in the areas of economics, technology, engineering, trade, finance, accounting, taxation or tourism, who have special skills that are urgently needed in the PRC.

Once the Foreign Expert License has been obtained, the PRC host entity may then apply for a Z Visa Notification Letter from the relevant authority for the foreigner and accompanying family members.

Single Entry Z Visa

Upon receipt of the Employment License/Representative Certificate/Foreign Expert License and the Z Visa Notification Letter, the foreigner should apply for a Z visa from the appropriate PRC consular post.

Post-Arrival Requirements

A Z visa is typically valid for 90 days, during which time the foreigner must enter the PRC. Within 15 days of arrival, the foreigner holding an Employment License or a Representative Certificate must apply for an Employment Permit from the local labour bureau. The foreigner holding a Foreign Expert License should apply for a Foreign Expert Certificate instead.

Within 30 days of arrival and upon issuance of the Employment Permit or Foreign Expert Certificate, the foreigner and accompanying family members must apply for Residence Permits with the local PSB.

Employment Permits and Residence Permits are employer and location specific. A foreigner may not work for other employers or reside in a location outside the area where the Permits are issued. If there are any changes in the registration items shown in the Employment Permit or Residence Permit, amendments must be promptly filed with the relevant authorities. If a foreigner no longer works for the employer, the Employment Permit must be de-registered with the local labour bureau while the Residence Permit should be cancelled with the local PSB.

Other Comments

HMT Residents and Overseas Chinese

HMT residents who wish to travel to the PRC need not apply for a visa. Instead, they may use their Mainland Travel Permit for Hong Kong and Macao Residents or their Mainland Travel Permit for Taiwan Residents.

HMT residents and overseas Chinese are required to obtain Employment Permits to work in the PRC. In some locations such as Shanghai, overseas Chinese are required to obtain a type of Residence Permit from the PSB, while Taiwan residents are required to obtain a Visa or Residence Endorsement to reside in the PRC.

Temporary Residence Registration

Foreigners, HMT residents and overseas Chinese are required to carry out temporary residence registration at the local police station in the district where they reside within 24 hours after they arrive in the PRC. If they move to a new residence or obtain new visas during their stay in the PRC, they are required to re-register with the local police station.

Philippines

Executive Summary

Since 1989, the Philippines relaxed immigration policies for the benefit of investors and retirees who wish to obtain permanent residence.

Key Government Agencies

The Bureau of Immigration is responsible for visa processing and the monitoring of the entry and exit of foreign nationals in the Philippines. Unlike in other jurisdictions, the work visa application process is usually initiated upon the arrival of the foreign national in the Philippines.

The Department of Labor and Employment (“DOLE”) is involved in the process when the foreign national intends to work in the Philippines. DOLE determines whether the foreign national is competent, willing and able to perform the requested services.

The Department of Foreign Affairs, through embassies and consulates around the world, is responsible for granting entry visas to restricted foreign nationals.

Business Travel

Temporary Visitor/Tourist Visa

Restricted nationals are required to obtain a Temporary Visitor/Tourist Visa from the Philippine Embassy or Consulate in their country of origin or residence. In addition to a Temporary Visitor/Tourist Visa, they must hold valid tickets for their return journey to the port of origin or next port of destination. Department regulations require that

passports are valid for a period of not less than 6 months beyond the contemplated period of stay.

An alien who wishes to extend his or her stay must obtain the approval of the Bureau of Immigration (“BI”).

Visa Waiver

Non-restricted nationals are allowed to enter the Philippines without visas for a limited period, with the exact number of days of stay depending upon the country of passport issuance.

Nationals from the following countries are allowed to enter the Philippines without a visa for a period of stay of twenty one days or less: Andorra, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cote d’Ivoire, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Gibraltar, Greece, Grenada, Guatemala, Guinea, Guinea, Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kiribati, Kuwait, Lao People’s Democratic Republic, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Solomon

Islands, Somalia, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Vietnam, Zambia, and Zimbabwe.

Holders of the following passports are allowed to enter the Philippines without a visa for a stay not exceeding fifty nine days: Brazil and Israel.

Holders of following passports are allowed to enter the Philippines without a visa for a stay not exceeding 7 days: Hong Kong SAR, British National Overseas (BNO) passports, Portuguese Passports issued in Macao, and Macau Special Administrative Region (SAR) passports.

Visa waiver visitors are still required to comply with the passport and return ticket requirements. Immigration Officers at ports of entry may exercise their discretion to admit holders of passports valid for at least sixty days beyond the intended period of stay.

Employment Assignments

Multiple Entry Special Visa

Multiple Entry Special Visas are available to:

- foreign personnel of offshore banking units of foreign banks duly licensed by the Central Bank of the Philippines to operate as such. The foreign personnel shall be issued a multiple entry special visa (also known as visa under Presidential Decree No. 1034) valid for a period of one year; and

- foreign personnel of regional or area headquarters of multinational companies which are officially recognized by the Philippine Government.

These foreign nationals, their spouses and unmarried minor children under twenty one years of age, if accompanying or joining them after their admission into the country as non-immigrants, may be issued multiple entry special visas valid for 3 years, which may be renewed upon legal and meritorious grounds.

The Holder of this visa is exempted from obtaining alien employment permit from the Department of Labor and Employment as a condition working in the Philippines.

Special Non-immigrant 47(a)(2) Visas

The Philippine President is authorized to issue this visa when public interest warrants. The President, acting through the appropriate government agencies, has exercised this authority to allow the entry of foreign personnel employed in supervisory, technical or advisory positions in Export Processing Zone Enterprises, Board of Investments registered enterprises, and Special Government Projects.

The employing entity must apply with the relevant government agency for authority to employ the foreign nationals. This visa is generally valid for an initial period of 1 year and is renewable from year to year. The dependents are entitled to the same visa.

Pre-arranged Employment Visas/9(g) Visa

This visa is available to foreign nationals who will be occupying an executive, technical, managerial or highly confidential position in a Philippine company. This is also available to foreign nationals who are proceeding to the Philippines to engage in any lawful occupation, whether for wages or salary or for other forms of compensation where

a *bona fide* employer-employee relationship exists. The petitioning company must sufficiently establish that there is no person in the Philippines that is willing and competent to perform the labor and service for which the foreign national is hired, and that the admission of the foreign national will be beneficial to the public interest.

Dependents are entitled to the same visa.

Treaty Traders' or Investors' Visa

An alien investor is entitled to enter the Philippines as a treaty trader or investor if he/she is a national of the United States, Germany or Japan, countries with which the Philippines has concluded a reciprocal agreement for the admission of treaty investors or traders. The local petitioning company must be majority-owned by United States, German or Japanese interests. The nationality of the foreign national and the majority of the shareholders of the employer company must be the same.

The term “treaty trader” includes an alien employed by a treaty investor in a supervisory or executive capacity.

The following must be proved:

- the alien or the employer intends to carry on “substantial trade” between the Philippines and the country in which the alien is a national; or
- the alien intends to develop and direct the operations of an enterprise in which the alien or the employer has invested, or is in the process of investing, a substantial amount of capital.

“Substantial trade” refers to a non-nationalized business in which an investment in a substantial amount in Philippine currency has been made. It is important to note, however, that the size of the investment

is merely one of the factors considered in determining what is deemed “substantial trade.”

When granted, the visa extends to the investor’s spouse and unmarried children below twenty one years of age. It is generally valid for a 1-year period subject to extension upon application of the investor.

Subic Bay Freeport Work Visa

Foreign nationals who possess executive or highly technical skills, which the DOL certifies no Filipino citizen within Subic Bay Freeport Zone possesses, may apply for this type of work visa with the Subic Bay Metropolitan Authority. This work visa is valid for one year and renewable from year to year.

Special Clark Work Visa

Foreign nationals who possess executive or highly technical skills, which no Filipino citizen within the Clark Economic Zone possesses, may apply for this type of work visa with the Clark Development Authority.

Alien Employment Permit (“AEP”)

In addition to acquiring the appropriate work or employment visa, a foreign national who wishes to work in the Philippines must, through the petitioning Philippine company, obtain an AEP.

The issuance of an AEP is subject to the non-availability of a person in the Philippines who is competent, able and willing to perform the services for which the foreign national is desired.

Under present immigration rules, a pending AEP application constitutes a provisional permit for the foreign national to work during the pendency of work or employment visa application.

Special Work Permit ("SWP")

An SWP may be obtained by a foreign national who intends to engage in a professional or commercial undertaking, which is not considered purely local employment, such as:

- professional athletes competing only for the limited period of their authorized stay;
- foreigners of distinguished merit and ability entering to perform exceptional temporary services, but having no contract of pre-arranged employment;
- artists and other performers who wish to perform in the country when the audience pays for the performance;
- certain foreigners, coming primarily to perform a non-competitive temporary service or to take non-competitive training, who would be classifiable as temporary workers or industrial trainees;
- foreigners authorized to search for hidden treasure;
- movie and television crews filming in the country; and
- foreign journalists pursuing their profession in the country.

Other Comments

Generally, a foreign national may acquire immigrant status in the Philippines if his country reciprocally allows Philippine citizens to become immigrants in that country. This privilege is usually embodied in a reciprocity agreement between the Philippines and the foreign national's country. There are three types of immigrant visas:

quota (or preference); non-quota; and special resident visas (“SRRV” and “SIRV”).

The issuance of quota or preference visas is governed by an order of preference and requires possession of qualification, skills, scientific, educational or technical knowledge that will advance and be beneficial to Philippine national interest. They are issued on a calendar basis and cannot exceed the numerical limitation of fifty in a given year. The most common type of non-quota visa is one that is issued to a foreign national on the basis of marriage to a Philippine citizen.

The SRRV visa is available to foreign nationals and former Filipinos at least thirty five years of age, and who deposit the minimum amount required by law with an accredited bank, to be invested in any of the specifically designated areas. The required deposit is US\$50,000 for applicants who are thirty five to forty nine years of age; while it is US\$20,000 for applicants above fifty years of age (if the fifty year old applicant receives a monthly pension, the required deposit is US\$10,000).

The SIRV is a program offered by the Philippine Government to alien investors wanting to obtain a special resident status with multiple entries for as long as the required US\$75,000 investment subsists.

A variation of the SIRV is issued to investors in tourist-related projects and tourist establishments. A foreign national who invests the amount of at least US\$50,000 in a qualified tourist-related project or tourism establishment, as determined by a governmental committee, shall be entitled to an SIRV.

Similar special resident visa benefits are available to any investor who has made and continues to maintain, an investment of not less than US\$250,000 within the Subic Bay Freeport Zone.

The SVEG is granted to a foreign national with controlling interests in an entity, firm, partnership or corporation that establishes, expands or rehabilitates a business activity, investment, enterprise or industry that enables the proportional employment of at least ten (10) full-time/regular Filipinos on a long-term basis in the Philippines.

A foreigner exercising managerial functions in an entity, firm, partnership or corporation that has the power to hire, dismiss and promote employees may apply for the SVEG, provided that they are nominated and their SVEG applications are endorsed by such entity, firm, partnership or corporation.

It is possible for residents of the Philippines to naturalize and become citizens. Dual citizenship is permitted.

Further Information

Baker & McKenzie's *Philippine Immigration Manual* provides further information about Philippine business visas, including a broader range of nonimmigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Poland

Executive Summary

All nationals of the European Union (“EU”) and the European Economic Area Member States (“EEA”), and Switzerland (jointly “EU citizens”), enjoy freedom of movement and the right of residence, as well as being exempt from the obligation to have a work permit to be employed, in Poland.

Citizens of countries that are not members of the EU, EEA, or Switzerland (the “non-EU citizens”) who wish to stay and/or work in Poland are subject to a different legal regime than the EU citizens. The non-EU citizens have to obtain an appropriate visa and/or a work permit, depending on the purpose of their entrance to Poland. Grant of any of this document usually depends on the citizenship and profession of the person applying for them.

As a general rule, in order to perform work in the Republic of Poland legally, a non-EU citizen should have a work permit issued by a Polish local authority – “Voivode (wojewoda)”. Work authorization is required regardless of whether a foreigner is to perform work in Poland on the basis of an employment contract or on the basis of another type of agreement such as a service agreement, or is entrusted with the performance of any other kind of remunerated work within Poland. The exceptions to that rule are detailed in the part concerning employment assignments.

Key Government Agencies

Polish consulates abroad are responsible for processing Polish visas. When crossing the border a foreigner may be required to prove financial means sufficient to cover the cost of entry, stay, and exit from Poland. The decision to refuse entrance into the Republic of Poland may be issued by the Commander of the Border Guards, if the

foreigner's details are included in the register of foreign nationals denied the right to stay within the Republic of Poland or the foreigner lacks a valid travel document or another valid document certifying his/her identity and citizenship. The decision to refuse entry may be appealed with the Commander of the Border Guard Unit.

Applications for registration and issuance of residence cards are submitted to the Voivodeship Office (Department of Citizen's Affairs) competent for the place of residence of the foreigner in Poland. Applications for issuance of visas are in principle submitted to the Polish consular offices.

The Head of the Office for Foreigners is the central authority of the Polish central government administration competent for handling all matters connected with foreigners' entry into, transit through, residence in, and leaving of the Republic of Poland, granting to foreigners the refugee status, asylum, tolerated stay and temporary protection with reservation to the competencies of other authorities as provided for in the applicable laws. The Minister competent for internal affairs exercises supervision over activities of the Head of the Office for Foreigners.

In order to perform work in Poland legally, a non – EU citizen, should have a work permit issued by one of Polish Voivodes (*wojewoda*). The basic overview of the procedure for obtaining the work permit and categories of foreigners exempted from the obligation to have it, are presented below. All the information concerning the procedure and obligations are also available at the Social Affairs Departments of Voivode Offices.

Current Trends

After Poland's entry into the EU on May 1, 2004, all nationals of the EU Member States as well as the EEA Member States (including Switzerland) are allowed to enter Poland without having to obtain a

visa – simply on the basis of a valid travel document (passport or national identity card) issued by his/her state of origin confirming the person's identity and citizenship.

The Member States of the EU (currently twenty seven countries) are: Belgium, France, Holland, Luxemburg, Germany, Italy (first countries of the United Europe), Denmark, Ireland, Great Britain (since 1973), Greece (since 1981), Spain, Portugal (since 1986), Austria, Finland, Sweden (since 1995), Poland, Slovakia, Slovenia, Lithuania, Latvia, Hungary, Czech Republic, Estonia, Malta, Cyprus (since 2004), Bulgaria, Romania (since 2007).

The Member States of the EEA are: all of the EU Member States, plus Iceland, Norway, Lichtenstein.

Switzerland is not a member state of the EU or the EEA.

A total of 29 states, including 25 EU states (except for Ireland, United Kingdom, Bulgaria and Romania) and four non-EU members (Iceland, Norway, Liechtenstein and Switzerland), are bound to the full set of rules in the Schengen Agreement, which deals with the abolition of systematic border controls among the participating countries. On December 21, 2007, Poland joined the Schengen Agreement, which means that as of that date there are no EU internal borders (on land and water) between Poland and other EU countries. The air borders at airports were internally opened for the other Schengen zone countries on March 30, 2008.

According to the Council Regulation (EC) No 539/2001 of March 15, 2001 (with further amendments) following on from the Schengen Agreement, today nationals of the following countries are not required to be in possession of a visa for entry and stay as tourists for a period not exceeding 3 months when crossing the external borders of the Schengen Agreement Member States: Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Brazil, Brunei Darussalam,

Chile, Canada, Costa Rica, Croatia, Guatemala, Honduras, Israel, Japan, Malaysia, Mauritius, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Salvador, San Marino, Saint Kitts and Nevis, Singapore, South Korea, United States of America, Uruguay, Venezuela, Vatican, Special Administrative Regions of the People's Republic of China: Hong Kong SAR and Macao SAR, and British Nationals (Overseas) not holding United Kingdom citizenship.

As a basic rule in Polish law, a foreigner who is a citizen of 2 or more states is treated as a citizen of the state whose travel document was the basis for entry into the Republic of Poland.

Business Travel

EU Citizens

EU citizens may enter and reside in the Republic of Poland for a period not exceeding 3 months, on the basis of a valid travel document or another valid document certifying his/her identity and citizenship. A family member of an EU citizen who is a non – EU citizen, may enter Poland on the basis of a valid travel document or a visa, if required. During the stay within Poland for up to 3 months, a family member who is a non – EU citizen must have a valid travel document.

EU citizens should have the right to stay in Poland for a period no longer than 3 months, if:

- an employee or a self-employed person in Poland (in this case the right to stay extends over family member staying in Poland with an EU citizen);
- covered by the general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the regulations on coordination, and is in possession of enough funds to provide for the cost of

the stay in Poland without the need to make use of social insurance benefits (in this case the right to stay extends over family member staying in Poland with an EU citizen);

- studies or receives vocational training in Poland and is covered by the general health insurance, is a person entitled to health insurance, or is a person entitled to health insurance benefits on the grounds of the regulations on coordination on health insurance benefits financed from public funds and is in possession of enough funds to provide for health coverage in Poland without the need to make use of social insurance benefits (in this case the right to stay extends over the spouse and child supported by an EU citizen or spouse and accompanying family members coming to Poland);
- married to a Polish national.

If the residence in Poland lasts for more than 3 months, an EU citizen is obliged to register the residence address in the Voivodeship Office competent for the place of residence in Poland. A family member who is a non – EU citizen is obliged to obtain an EU citizen family member residence card.

The application for registration of or issuance of the residence card for a member of an EU citizen's family must be submitted personally to the competent Voivodeship Office no later than on the next day following the end of three months from the day of entry into the Republic of Poland.

Non-EU Citizens

Foreign nationals coming to Poland on short-term business trips will most likely use one of these types of visitor's visas:

- Visitor's visa – issued as a uniform or domestic visa.

- A uniform visitor's visa – gives right of entry and continuous stay inside the Schengen member states or for several consecutive stays for a total period not exceeding 3 months within the period of 6 months, counted from the day of the first entry into the said territory.
- A domestic visitor's visa – gives right of entry and continuous stay in the Republic of Poland or for several consecutive stays for a total period not exceeding 1 year during the visa's validity period.

A domestic visitor's visa can be issued for the purposes of entry and stay described below, if the circumstances of the stay require a foreigner to stay for more than 3 months.

The purposes of entry and stay are:

- a visit;
- carrying on economic activity;
- conducting cultural activity or participation in international conferences;
- performing official tasks by representatives of authorities of a foreign state or an international organization;
- participating in proceedings for granting an asylum;
- performing work, receiving or providing education or training,
- enjoying temporary protection;

- participating in a cultural or educational exchange or humanitarian aid program, or program of holiday jobs for students.

The period of stay under the domestic visitor's visa must be defined within the limits specified above, according to the purpose indicated by the foreigner.

Training

According to the Polish law, there is no specific type of visa designed exclusively for training.

EU citizens have the right to stay in Poland for the purpose of studying according to the regulations described above.

For non-EU citizens the most suitable solution for training purposes is to obtain a visitor's visa (either uniform or domestic), depending on the type and length of training. The regulations concerning the domestic visitor's visa provide that this type of visa can be issued for the purposes of performing work, receiving or providing education and training, *etc.*

It should also be noted that EU citizens do not need any visa or work permit to receive training in Poland. According to the internal regulations, there are also several categories of non-EEA nationals who are not required to possess a work permit in Poland in connection with training, such as:

- trainers and qualified advisors participating in programs financed by the EU, other international organizations or by loans taken out by the Polish government;
- foreign language teachers – native speakers, citizens of the U.S.A., Canada, Australia, New Zealand;

- people who occasionally give lectures and presentations (not exceeding thirty days a year), if they have permanent residence abroad;
- students of Polish universities – during summer break – in July, August and September;
- students on internships arranged by international student associations;
- students within a framework of co-operation between Polish employment services and their partners abroad;
- foreign students on paid internships; and
- scientists in research and development institutions.

In case a non-EU citizen intends to stay in Poland longer than the period of stay envisaged by the visa issued for the purpose of education, it is possible to apply for a temporary residence permit in Poland for a specified period of time. That document can be issued for the period necessary for achieving the purpose of the foreigner's stay in Poland, but not longer than 2 years. When staying abroad, an application for the temporary residence permit should be filed via the consular office. If the foreigner is in Poland, application for that permit is made to the Department of Citizen's Affairs at the Voivodeship Office in the capital city of the respective Voivodeship.

Employment Assignments

EU Citizens

All nationals of the EU citizens are exempted from the obligation to have a work permit to be employed in Poland.

As long as EU citizens are in paid employment (or perform work in Poland as independent service provider or on other basis), they are subject to the same legislation for social contributions and benefit from the same advantages as national employees.

Every EU citizen may make use of public employment services.

Non–EU Citizens

According to Polish law, a foreigner wanting to work legally in the Republic of Poland must obtain – a work permit (“pozwolenie na pracę”), issued by one of Polish Voivodeship Offices, and a document confirming his/her legal stay in Poland with the right to perform work, which is either a: visa for the purpose of work (“wiza krajowa pobyтова w celu wykonywania pracy”), issued by a Polish consulate or a temporary residence permit in Poland for a specified period of time (“zezwolenie na zamieszkanie na czas oznaczony”) issued by the Department of Citizen’s Affairs at the Voivodeship Office.

There are several categories of foreigners who are exempted from the obligation to obtain a work permit. These categories are in particular:

- all nationals of the EU Member States as well as the EEA Member States (including Switzerland) and members of their families;
- foreigners with a settlement permit;
- foreigners granted a long-term EC resident status in Poland and their spouses;
- foreigners granted a long-term EC resident status in another EU country, with a temporary residence permit in Poland, issued on the basis of employment;

- foreigners with a temporary residence permit in Poland issued on the basis of the declared intention to start business or study in Poland, marry a Polish citizen and other reasons;
- refugees, people granted temporary protection, people granted the tolerated stay status;
- foreigners holding a valid Pole Card;
- foreigners who are allowed to perform work in Poland without having to obtain a work permit according to international contracts and agreements binding the Republic of Poland and signed with the country of their citizenship;
- members of Military Forces stationed in Poland;
- journalists and other foreign mass media correspondents;
- artists (individual or in groups) participating in different kinds of artistic events (not exceeding thirty days a year);
- sportsmen performing for institutions registered in Poland;
- people posted by their foreign employers (provided that they have permanent residence abroad), for the period not exceeding 3 months, for the purpose of:
 - assembly, maintenance or repairs of devices, equipment *etc.*, if the foreign employer is a manufacturer thereof;
 - acceptance of goods produced by a Polish company;
 - assembly and disassembly of exhibition stands.

- people temporarily posted by the EU employer to provide services in Poland;
- management board members of legal entities that have been registered under respective provisions in Poland or are in organization, if they stay in Poland on the basis of a working visa and their stay in Poland does not exceed 6 months within twelve consecutive months; and
- citizens of neighboring countries, for the period not exceeding 6 months within the period of twelve months on the basis of the future employer with the intent to employ such person.

A work permit is a specific type of authorization issued following an investigation by labor authorities into the reasons for employing foreigners in Poland. There are several types of the work permits, depending on the position the employee would take or the place of seat of the employer (in Poland or abroad). As a rule, a work permit is issued if there are no Polish (or EEA and Swiss citizens) candidates to be found on the domestic market (work permit type A).

In general the procedure for obtaining a work permit consists of 2 stages:

- Obtaining the work permit by the employer; and
- Obtaining a work visa/residency card by the non-EU national.

Commencing work in the Republic of Poland without a work permit (first step of the above procedure) is strictly prohibited and may result in criminal liability of the individual concerned and the hosting entity employing the individual. Illegal employment (without the work permit) or other breach of the employment regulations is also likely to cause a 2-year ban on obtaining of work permits by the employer concerned, as well as by the foreigner who broke the law.

A work permit is applied for and issued to an employer as permission to employ a specific, named, non-EU citizen, for a specific job, for a specific period of time. Moreover, if a foreigner performs work in various positions at the same employer, a work permit for each position is needed.

In case of the work permit type A, first, the Polish legal entity or person who wants to employ the non-EU citizen (the “Employer”) undertakes to attempt to fill the vacancy with a Polish national or another person who does not require a work permit (EEA and Swiss citizens in particular). In order to do so, all reasonable efforts should be made. The Employer is obliged to make an announcement of a free vacancy in the labor agency – District Labour Office competent for the place in which the work is to be performed.

If there are no Polish or EEA (or Swiss) national citizens available suitable for the post, the Labour Office issues an appropriate confirmation to the employer in writing.

Once the Employer obtains the confirmation from the District Labour Office, it submits an application for issuance of a work permit for a foreign national, together with a copy of the confirmation, to the local immigration authority (the immigration section of the Voivodeship Office).

The Employer is obliged to provide in the application the personal details of the foreigner, the details of the passport document, and, if any, information on the foreigner’s qualifications and professional experience.

Furthermore, the Employer must specify in the application the proposed post in Poland, the intended period of employment, and the legal basis of employment (*e.g.*, employment agreement, service agreement). All documents submitted to Polish immigration authorities must be in Polish. Therefore, certain documents, such as

the foreigner's certificates and diplomas, will have to be translated into Polish by a certified translator.

After submitting the application form, the Voivode examines the application taking into account the local labor market situation – taking into consideration the confirmation from the District Labour Office.

In case the confirmation from the District Labour Office shows that there are not any Polish (or EEA and Swiss) candidates on the local labor market fulfilling the Employer's criteria, the Voivode issues the work permit.

The work permit is granted for a period not exceeding three years.

After having obtained the work permit, the Employer must deliver this to the non-EU citizen to submit when applying for the work visa.

In case a non – EU citizen intends to stay in Poland longer than the period of stay envisaged by the visa issued for the purpose of work, it is possible to apply for a temporary residence permit in Poland for a specified period of time. That document can be issued for less than 2 years, no longer than the time the work permit is issued for. When staying abroad, an application for the temporary residence permit should be filed via the consular office. If the foreigner is in Poland, application for that permit is filed with the Department of Citizen's Affairs at the Voivodeship Office.

It should also be noted that, after arrival to Poland, the foreigner is obliged to legalize residence in Poland with the administrative local authority at their temporary registered address in Poland.

The work permit is issued for a period not longer than the period of stay specified in the work visa or in the employee's temporary

residence permit in Poland for a specified period of time (see “Other Comments” below).

The work permit document is issued in 3 copies, one for the Employer, one for the employee and one for the Voivode Office.

After that the Employer signs an agreement with the non-EU citizen for the time specified in the work permit. The contract should strictly reflect conditions in the work permit – as regards time, place of work, position, *etc.*

Change of work place requires immediate notification to the Voivode.

A domestic visitor’s visa for the purpose of performing work may be issued to a non-EU citizen who presents a permit to work in the Republic of Poland or a written declaration of the employer of the intention to entrust the foreigner with the performance of work if no work permit is required. This type of visa is issued by the consul competent with respect to the place of permanent residence of the foreigner.

That kind of visa can be issued for the period of stay corresponding to the period indicated in the work permit, but no longer than 1 year. A foreigner who intends to perform in the Republic of Poland seasonal work for a specified time must be issued a domestic visitor’s visa for the purpose of performing work for a period of stay corresponding to the period indicated in the work permit or declaration, but not longer than 6 months in the period of twelve months from the date of first entrance to Poland.

Security Contributions

According to Polish Law, there are four kinds of social security contributions that an employer and employee are obliged to pay in connection with the employment agreement.

As regards payment of social contributions for non – EU citizens, Polish Law states that that duty arises in the country in which the person is employed and where the work is being performed. – “Lex loci laboris.”

That means that the Employer employing a foreign worker (as an employee or an independent service provider) in Poland is subject to Polish social security laws and not the social security laws of the country in which the Employer entity might be located or which the foreign worker is a citizen of. The effect of this is that the foreign Employer who does not have its place of business in Poland is in principle obliged to register with the Social Security Agency and pay all the required social security contributions for any worker employed in Poland. There are several exceptions from the above rule, such as employees who were posted by their Employers (provided they have permanent residence abroad) to perform work in Poland for a specified period of time or nationals of countries which are parties to international agreements, recommendations, conventions and provisions binding on the Republic of Poland in scope of social contributions regulations.

EU law also stipulates that the social security contributions are paid in principle in the country where the work is performed.

Other Comments

All applications for visas and residence or work permits must be written in Polish on the official forms. Documents drawn up in languages other than Polish, attached to the application (if necessary), must be submitted with their translations into the Polish language by a sworn translator.

All foreigners staying in the Republic of Poland register on their own with the administrative local authority at their temporary registered address in Poland, if they do not stay at a hotel or at the host party's

premises during their stay in Poland. In such a case this registration should follow an uninterrupted stay of 4 days in Poland at the latest. In order to be registered, a foreigner will be required to present the relevant work visa/residence or work permit or - in case of EU Citizens - a passport.

The visitor's visa of a foreigner staying in the Republic of Poland can be extended if all the following conditions are met:

- There is an important professional or personal interest of the foreigner or humanitarian considerations in favor of it;
- The events which are the reason for applying for visa extension were beyond the foreigner's control and could not be foreseen at the time when the visa was issued;
- The circumstances of the case do not indicate that the purpose of the foreigner's stay in Poland will be different from the declared one; and
- The circumstances against issuing a foreigner a visa do not occur.

The period of stay in the Republic of Poland on the basis of an extended visa may not exceed the period of stay envisaged for the given type of a visitor's visa.

If a foreigner intends to stay in the Republic of Poland longer than the period of stay envisaged by the visa instead of extending the visa, the foreigner can apply for a temporary residence permit in Poland for a specified period of time. That document is issued for the period necessary for achieving the purpose of the foreigner's stay in Poland, but not longer than 2 years, and is issued usually with the connection of a different basis, such as:

- Holding a work permit or a written employer's declaration of the intention to entrust the foreigner with the performance of work if no work permit is required;
- Carrying on economic activity pursuant to the provisions applicable in this field in Poland, which activity is beneficial to the national economy;
- Intending to continue artistic activity;
- Participating in professional training or internship conducted within the framework of EU programs;
- Marrying a Polish citizen; or
- Other reasons specified in the Aliens Act of 13 June 2003 (Journal of Laws of 2006, No. 234, item 1694 with further amendments).

The legal stay in the Republic of Poland is also guaranteed by obtaining a:

- A settlement permit.

A permit to settle is issued to a foreigner who:

- is an underage child of a foreigner holding a permit to settle, and was born in Poland,
- has been married to a Polish citizen for at least 3 years before filing the application and, immediately before that had continuously stayed in Poland for at least 2 years on the basis of a permit to reside for a specified period of time,

- immediately before filing the application had continuously stayed in Poland for a period not shorter than ten years on the basis of a consent of tolerated stay or for 5 years in connection with obtaining the refugee status,
 - is a child of a Polish citizen who exercises parental authority over him/her.
- A long-term EC resident stay permit is granted to a foreigner who has stayed in Poland immediately before filing the application, legally and continuously for at least 5 years and who has:
 - a stable and regular source of income sufficient to cover the costs of maintenance for himself/herself and dependent family members,
 - health insurance within the meaning of provisions on natural health insurance or insurer's confirmation of coverage of the costs of medical treatment in Poland.
 - A long-term EC resident stay permit can not be obtained by foreigners who:
 - stayed in Poland in order to undergo studies or professional training,
 - had consent for tolerated stay, asylum, status of refugee granted in Poland or enjoyed temporary protection or applied for one of mentioned instruments,
 - is/was an “au pair” worker, seasonal worker, worker delegated by a service provider for the purpose of cross – border provision of services.

- A long-term EC resident status in another EU country, with a temporary residence permit in Poland, issued on the base of employment.

Foreigners holding a refugee status and people granted temporary protection or the tolerated stay status are also in the Republic of Poland legally.

Citizenship of the Republic of Poland can be granted by the President of the Republic of Poland. A foreigner is eligible to apply for citizenship after residing in Poland for at least 5 years on the basis of a permit to settle, long-term EC resident status, or right of a permanent stay. The period may be reduced to 3 years if a foreigner is married to a Polish citizen; however, marriage to a Polish national does not affect the citizenship of either party.

Russian Federation

Executive Summary

Under Russian law an employer planning to employ foreign nationals who need a visa to enter Russia is required to obtain permission to hire foreign nationals, work permits and work visas for such foreign nationals before they may start performing their job duties in Russia. Currently, citizens of the majority of countries, including the USA, Canada, China, India, Japan, Korea, as well as all Latin American and European Union countries are required to obtain a visa to enter Russia. A work visa is generally issued for a period of one year.

Those foreign nationals who do not need a visa to enter Russia must also obtain work permits before they start their employment in Russia.

Foreign nationals who enter Russia on business visas have the right to participate in negotiations, training, *etc.*, but cannot be legally employed prior to obtaining both a work visa and work permit.

The procedures for obtaining permission to hire, a work permit and a work visa invitation involve several consecutive steps, and take about four to five months to complete (if the quota for work permits has already been obtained). Additionally, as a precondition for obtaining permission to hire and a work permit, a company is to annually file an application for a quota for work permits for the following year before May 1. Thus, employment of a foreign national in Russia requires advance planning to allow sufficient time for such procedures.

Importantly, the Russian migration legislation is currently undergoing significant amendments and changes, so the procedures involved can be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

Currently, the procedures for obtaining permission to work in Russia for foreign national employees are comparable in their complexity and duration to those in the USA or Western Europe.

Key Government Agencies

A Russian visa can be obtained at a Russian consulate abroad on the basis of an official visa invitation issued by the Federal Migration Service of the Russian Federation, applied for and obtained by the inviting party, which in case of a work visa is the employer. The foreign national should present the original invitation together with other required documents (passport, application form, *etc.*) to the relevant Russian consulate in order to apply for a visa.

An employer planning to hire a foreign national who enters Russia under a visa regime needs to obtain the documents:

- permission to hire and use foreign employees (“Permission to Hire”);
- an individual work permit for each individual foreign national employee (“Work Permit”); and
- a work visa invitation.

All these documents can be obtained from the Federal Migration Service of the Russian Federation.

Current Trends

Recently the Russian law regulating employment of foreign nationals in Russia has been amended. Most of the amendments have been effective since July 1, 2010.

The amendments introduce a special category of foreign employee - a “highly qualified foreign specialist”. The main criterion for recognizing a foreign employee as a highly qualified foreign specialist is a salary level of two million rubles per year (currently approximately USD 67,000) or more. Highly qualified foreign specialists can take advantage of a new simplified procedure for obtaining Work Permits and work visas.

To receive Work Permits for highly qualified foreign specialists their employers are not required to:

- obtain a quota for Work Permits;
- register vacancies with the employment authorities;
- obtain permission to hire foreign nationals; or
- register as an inviting party with the Federal Migration Service.

A Work Permit for a highly qualified foreign specialist may run for three years, with the possibility of repeatedly extending it as long as the specialist has a valid employment contract. The valid territory for the Work Permit may include more than one region of the Russian Federation.

Business Travel

Ordinary Business Visa (“Business Visa”)

Foreign nationals coming to the Russian Federation on short-term business trips may use an ordinary Business Visa. As a general rule, visitors with Business Visas visit Russia for the purpose of participation in key negotiations on business and economic matters, for professional training at Russian joint ventures or accredited

representative offices of foreign commercial entities, or to attend exhibitions or other events. In all of these cases such business-purpose visits are assumed to be short.

There are three types of Business Visa:

- Single entry;
- Double entry; and
- Multiple entry.

Single and double-entry Business Visas may be issued for up to three months. A multiple-entry Business Visa may be issued for up to one year, but it can be used for a limited period of time only, as set forth below.

Currently any foreign national can stay in Russia on the basis of a one-year multiple-entry business visa – without having to leave Russia – for up to 90 days in a period of 180 days. Thus, the maximum period of uninterrupted stay in Russia on the basis of such a business visa is currently 90 consecutive days, and the maximum period of stay in Russia is 180 days in total per year. Every 90 days foreign nationals on a one-year multiple-entry visa have to leave the country. Upon re-entry they can stay in Russia for no longer than another 90 days.

Importantly, pursuant to the migration legislation a foreign national is prohibited from being employed or from working under a civil law contract based on a Business Visa. Therefore, in order to legitimately enter Russia for the purpose of being employed or to provide services under a civil law contract, a foreign national should hold a work visa and a Work Permit. Additionally, it is impossible to change the type of visa, *e.g.*, from a business to a work visa. Entering Russia with a Business Visa for the purpose of employment is considered a

misrepresentation in declaring the purpose of visiting Russia. It is considered an administrative violation and is severely prosecuted if disclosed.

Visa Waiver

There are several narrow exemptions when a visa is not required for entry into the Russian Federation. These exemptions apply, in particular, to the following foreign nationals:

- Citizens of all CIS countries except for Georgia and Turkmenistan;
- Permanent residents of Russia holding a permanent residence permit; and
- Refugees.

Some citizens of Georgia and Turkmenistan enter Russia under the visa-free regime. However, the situation with issuance of visas to citizens of Georgia is currently unclear due to the suspension of diplomatic relations between Russia and Georgia.

Employers do not need to obtain Permission to Hire foreign nationals who do not need a visa to enter Russia. However, prior to commencing work in Russia such foreign nationals should obtain individual Work Permits. When hiring such foreign nationals employers must ensure that they have a valid Work Permit for holding the job position for which they are hired (Please also see our comments below in the Sanctions for Infringement of Migration and Visa Law Requirements section).

Training

Foreign nationals visiting Russia to participate in professional training can obtain an ordinary Business Visa. As mentioned above, foreign nationals entering Russia under a Business Visa are not allowed to be employed or to work in Russia. Therefore, in the event a foreign national participates in on-the-job training, the hosting party should prepare a training plan and other formal documents confirming the educational nature of such training program. Furthermore, foreign nationals participating in such training programs should not be paid salaries; if they are, their participation in such training programs could be considered to be employment.

Employment Assignments

Generally, all employers operating in Russia who plan to conclude a labor or civil law contract with foreign employees who enter Russia under a visa regime must obtain the following:

- Permission to Hire - for the employer;
- Work Permit - for each foreign employee; and
- Invitation for a work visa - for each foreign national employee.

The current standard procedure for obtaining the above documents involves several consecutive steps, and takes about four to five months to complete. Accordingly, employment of a foreign national in Russia requires advance planning to allow sufficient time for the procedure.

The simplified procedure of obtaining immigration documents for highly qualified foreign specialists is outlined in a separate paragraph after the description of a standard procedure.

Ordinary Work Visa ("Work Visa")

The current procedure for obtaining a Work Visa for a foreign national is briefly outlined below. The procedure may be used by Russian legal entities, accredited representative offices or branch offices of foreign firms.

The procedure for obtaining a Work Visa consists of the following four steps:

- **Step One:** The employer registers with the Federal Migration Service as an inviting party for visa invitation purposes, and obtains a registration card confirming such registration. This step normally takes at least 2-3 weeks to complete. Under the requirements of the Federal Migration Service imposed on all applicants, the set of documents required for registration of the employing company, accredited representative office or branch, and all further visa support applications, should be filed by an authorized representative of the company/rep office or branch. Such representative should hold a relevant power of attorney issued by the employer. In case of initial registration, the presence of the employer's CEO/chief representative is required.
- **Step Two:** The employer obtains an Invitation for a single-entry visa from the Federal Migration Service. This step usually takes at least 2-3 weeks to complete. The maximum validity of the invitation is three months.
- **Step Three:** The foreign national planning to work in Russia obtains a single-entry visa at the Russian consulate in the country of the foreign national's citizenship or country of residence, provided that the foreign national has a document certifying the ground for the stay in such country for a period exceeding ninety days (*e.g.*, a residence permit). The single-entry visa is obtained on the basis of the invitation provided

by the employer. If the foreign national obtained the invitation while in Russia, then the procedure is to leave Russia and apply to the respective above-mentioned Russian consulate abroad to obtain the single-entry visa. The foreign national's current Russian visa (if any) is to be cancelled by the Russian consulate simultaneously with the issuance of the new single-entry visa.

- Step 4 - The foreign national exchanges the Single Entry Visa for a Multiple Entry Work Visa upon arrival to Russia. The set of documents required for the exchange is submitted to the Federal Migration Service upon the foreign national's arrival in Russia.

Accredited representative offices or accredited branches of foreign firms may also apply for Work Visa support to their accrediting body. In this case, such representative/branch office of a foreign firm must first obtain a personal accreditation card for the foreign employee from the accrediting body, and then apply to the accrediting body to obtain an invitation for a single-entry visa from the Federal Migration Service.

This procedure is less time consuming and does not require the employer's preliminary registration with the Federal Migration Service for work visa invitation purposes. However, the foreign national should then obtain a single-entry visa at a Russian consulate abroad and then exchange it for a multiple-entry work visa upon his/her arrival in Russia (please, refer to Steps 3 and 4 above of the procedure for obtaining a Work Visa.)

The maximum duration of a Work Visa is 1 year, but it can be limited by the expiry term of other documents (*e.g.*, passport, Work Permit or personal accreditation card). Renewal of a Work Visa involves a less complicated procedure than its obtaining.

Permission to Hire and Work Permit

An employer is not allowed to employ a foreign national who enters Russia under a visa regime without a relevant Permission to Hire, and the foreign national employee is not allowed to start working without obtaining – in addition to the above-mentioned Work Visa – a Work Permit.

The total number of foreign nationals that can be legally employed in Russia each year, *i.e.*, the quota of foreign employees, is established by the Russian Government on an annual basis. Employers planning to employ foreign nationals in the following year should file information on their need for foreign employees with the Public Employment Service before May 1.

The Russian Government each year approves a list of professions/positions for qualified foreign specialists, to whom the quota requirement will not apply. Traditionally, this list is approved in the beginning of the year and includes job titles of chief executive officers/directors of almost all types of Russian legal entities. In particular, the list contains the following positions: general director and director of a joint stock company, director of a representative office, director of a factory, chairman and deputy chairman of an executive committee, director for economics, department director, information security engineer, etc.

Currently, an employer that plans to hire a foreign national who requires a visa to enter Russia should apply to the Federal Migration Service for Permission to Hire and a Work Permit using the so-called “one-window” system, and submitting all the necessary documents. The documents that should be filed with the Federal Migration Service include the following: (i) a legalized/apostilled copy of the foreign national’s university degree certificate; (ii) original medical certificates; (iii) a copy of the foreign national’s passport; and (iv) draft employment agreement, *etc.*

The original medical certificates to be submitted to the Federal Migration Service to obtain a Work Permit should confirm that the foreign national does not suffer from any of the following: (i) leprosy (Hansen's disease); (ii) tuberculosis (white plague); (iii) syphilis; (iv) chlamydial (venereal) lymphogranuloma; (v) chancroid; (vi) HIV; or (vii) drug addiction.

Generally, such medical certificates should be obtained by the foreign national at local medical establishments holding the relevant licenses. The foreign national employee is required to personally show up at one such medical establishment for medical tests, an examination, and an interview. The medical certificates can also be obtained abroad. However, in this case the certificates should be duly notarized, legalized/apostilled and supported by a notarized Russian translation.

Importantly, such medical certificates have an effective term of only 3 months; therefore, they should be issued no earlier than 3 months before the expected receipt of the Work Permit from the Federal Migration Service.

However, prior to applying to the Federal Migration Service the employer needs to file information with the Public Employment Service on its needs regarding employees, *i.e.*, inform of the open vacancies of the employer. In the event the Public Employment Service provides the employer with a local candidate for any such vacancy, the employer would have to hire such candidate or prepare a motivated rejection of such candidate in order to be able to justify its need for a specifically foreign employee.

A further application to the Federal Migration Service can be submitted no earlier than 1 calendar month after the above-mentioned information on the need for additional employees is filed with the Public Employment Service.

The procedures for obtaining the Permission to Hire and Work Permits can be modified by the Federal Migration Service at any time, so it is highly recommended to verify the procedures and documentary requirements in advance on a case-by-case basis.

A Work Permit is normally issued for a term of up to 1 year from the date when the Permission to Hire was issued, but it can be renewed for a shorter term. Renewal of a Work Permit involves the same procedure and takes the same amount of time as obtaining the first Work Permit.

A Work Permit is valid only for a single employing entity, in a single constituent region of the Russian Federation (*e.g.*, Moscow), and for holding a single job (*e.g.*, general director). Thus, two Work Permits would be required for a foreign employee holding 2 jobs in Russia, and a third Work Permit would be required if the employee changes employers, or is transferred to another job (*e.g.*, promoted) or to a different region in Russia (not on a business trip).

However, there are certain exclusions from the rule. They are established by the decree of the Russian Government and fall into 2 main categories:

- sending the employee on a business trip; and
- if the work is of a traveling character, or work is done en route (which must be specified in the employment agreement).

After obtaining the Permission to Hire and Work Permit, the employer needs to document the commencement of employment of a foreign national in accordance with Russian labor law requirements. Thus the employer should execute a Russian law employment agreement (in Russian or accompanied by a Russian translation), issue an internal HR order on the employee's appointment to a particular job position, make an entry in the employee's labor book on his/her hiring,

complete the employee's personal data card (Form T-2) and arrange for other HR paperwork. All these documents must be issued in the Russian language.

Procedure for Obtaining Work Permits and Work Visas for Highly Qualified Foreign Specialists

As mentioned above, recently the Russian legislation on foreign nationals has been amended to introduce a special category of foreign employee - the highly qualified foreign specialist ("HQFS"). An HQFS can enjoy a simplified procedure for obtaining of a Work Permit and a Work Visa.

The main criterion for recognizing a foreign employee as an HQFS is a salary level of two million rubles (currently approximately US\$ 67,000) per year or more. Defining the required qualification level and the assessment of the competence of foreign employees as HQFSs is left to the employers themselves.

To obtain a Work Permit and a Work Visa for the HQFS his/her employer is not required to:

- obtain a quota for Work Permits;
- register vacancies with the employment authorities;
- obtain Permission to Hire foreign nationals; or
- register as an inviting party with the Federal Migration Service.

A Work Permit for the HQFS and a relevant multiple-entry Work Visa invitation are processed by the Federal Migration Service within 14 business days.

A Work Permit and a Work Visa for the HUFFS may run for three years, with the possibility of repeatedly extending them as long as the HUFFS have a valid employment contract. The valid territory for the Work Permit may include more than one region in the Russian Federation.

Certain employers, in particular, representative offices of foreign legal entities, non-profit and religious organizations, and those employers who have been penalized for illegal employment of foreign nationals in Russia within the last two years, can not use the simplified procedure for obtaining Work Permits for Huffs.

Pursuant to the legislation, employers within 30 days of obtaining a Work Permit for an HUFFS must provide the Federal Migration Service with confirmation that the HUFFS has been registered with the tax authorities, and inform the Federal Migration Service on a quarterly basis on the fulfillment of the duty to disburse salary payments to such HUFFS and, if applicable, on termination of the Haft's employment or civil law contract or on the fact that he or she has been provided with long-term unpaid leave.

Work Permit Waiver

The current Russian legislation provides for several narrow exemptions when the employee is not required to obtain a Russian Work Permit. These exemptions apply, in particular, to the following foreign nationals:

- Citizens of Belarus;
- Permanent residents of Russia holding a permanent resident permit;
- Employees of diplomatic and consular institutions of foreign countries in Russia, or employees of international

governmental organizations enjoying diplomatic status, and their private domestic employees;

- Participants in the State Program for Assistance to the Voluntary Movement to the Russian Federation of Compatriots Residing Abroad and their family members;
- Employees of foreign legal entities (producers or suppliers), performing installation (contract supervision) works, servicing and/or repairs of technical equipment supplied to the Russian Federation by their employers;
- Journalists duly accredited in the Russian Federation;
- Students at Russian educational institutions working during vacations;
- Students at Russian educational institutions who work in their educational institutions in positions of auxiliary educational staff;
- Lecturers invited to Russia to give lectures in educational institutions, except for those persons who perform pedagogical activity in professional religious educational institutions (in ecclesiastical educational institutions); and
- Duly accredited employees of Russian representative offices of foreign legal entities on the basis of the principle of reciprocity under international treaties concluded by Russia with foreign states.

Other Comments

Migration Records

Under Russian law, the Russian migration authorities should be notified of the arrival of every foreign national entering Russia under any type of visa or enjoying a visa-free regime (*i.e.*, the migration notification requirement should be observed). Specifically, the employing/hosting party (*e.g.*, landlord, *etc.*) should notify the Russian migration authorities of such arrival at the place of temporary stay by way of a formal written notice within three business days of the arrival date (the day of arrival is included in this term, if a business day).

Every time the foreign national leaves Russia or even just visits another city for more than three business days, the Russian migration authorities should also be notified of such departure within two business days after the departure date.

If a foreign national visits another city within Russia for more than 3 business days, similar migration notification on arrival should be performed. In practice, formal written notices on arrival/departure of a foreign national employee are submitted by the hosting party, *i.e.*, by the employer, hotel staff, *etc.*

Other Types of Ordinary Visas to Enter Russia

Foreign nationals can obtain different types of visas depending on the purpose of their visit, but it is essential that the type of visa matches the actual purpose of the visit:

- an ordinary private visa, which can be obtained upon an invitation from a Russian citizen, a foreign national permanently residing in Russia, a Russian legal entity, *etc.*;

- an ordinary tourist visa, including a group tourist visa;
- an ordinary study visa, which can be obtained by students at Russian educational institutions;
- an ordinary humanitarian visa, which can be obtained by a foreign national entering Russia for the purpose of scientific, cultural, sporting or religious contacts, charity activity or delivery of humanitarian aid; or
- An ordinary refugee visa, which can be obtained by a person seeking refuge.

Sanctions for Infringement of Migration and Visa Law Requirements

Work Permit and work visa requirements are enforced by the Russian Federal Migration Service with increasing vigor. Non-compliance with these requirements may entail imposition of significant penalties envisaged by the Russian Administrative Offences Code. Moreover, administrative sanctions for violation of Russian migration rules may be imposed on the employer, its officers, and the foreign national employee, and include, *inter alia*, heavy fines, and, in the worst cases, deportation from Russia of foreign nationals who do not have the relevant work permits or have the wrong type of visa, and suspension of operations of the employer.

Set forth below are comments on the administrative sanctions that can be applied if immigration requirements are not complied with.

Provision of Services in Russia without the Required Permission to Hire and/or the Work Permit

The employer and/or its officers could become subject to the following administrative fines for violation of immigration requirements: A fine of up to RUB 50,000 (currently approximately

USD 1,660) can be imposed on the employer's officers who are found to be responsible for use and employment of foreign nationals without the relevant permissions; and a fine of up to RUB 800,000 (currently approximately USD 26,600) can be imposed on the employer for the same violation. Moreover, fines may be imposed for each violation separately, *e.g.*, one fine for the absence of Permission to Hire, another fine for the absence of a Work Permit, *etc.* In a worst case scenario, violation of Russian migration laws could lead to the annulment of the employer's Permission to Hire, or even temporary suspension of the employer's activities for up to ninety days. At the same time, the foreign national could become subject to an administrative fine of up to RUB 5,000 (currently approximately USD 165), and even deportation from Russia. Deportation or imposition of administrative fines on foreign nationals may also cause them difficulties in visiting Russia and/or obtaining Work Permits and work visas in the future.

Failure to Comply with the Visa Regime Requirement

A foreign national entering Russia to provide services under a civil law contract or to be employed on the basis of a visa other than work visa (for example, a business visa) may be considered infringing the visa regime. The employer and/or its officers could become subject to the following administrative fines for this infringement:

- A fine of up to RUB 50,000 (currently approximately USD 1,660) can be imposed on the employer's officers responsible for either use of the above services or employment of the foreign national without having obtained the relevant visa therefore.
- A fine of up to RUB 500,000 (currently approximately USD 16,600) can be imposed on the employer.

- The foreign national could also become subject to an administrative fine of up to RUB 5,000 (currently approximately USD 165), and, in a worst case scenario, deportation from Russia.
- Deportation or imposition of administrative fines could also cause difficulties in visiting Russia and/or obtaining Work Permits and work visas in the future.

Failure to Notify the Migration, Employment, or Tax Authorities on Employment/Contracting of a Foreign national

Under Russian law the employer must notify certain local state authorities of the employment of a foreign national. Notification of an application having been made for a visa invitation or conclusion of an employment agreement with a foreign national should be filed by the employer with its local tax office within ten days of the date of the application's filing or conclusion of the respective employment agreement. Notification of employment of a foreign national entering Russia under a visa regime should also be submitted to the local office of both the Public Employment Service and the State Labor Inspectorate within one month from the date on which the employment agreement was concluded.

Upon conclusion of an employment agreement with a foreign national who does not need a visa to enter Russia, the employer still needs to notify the local offices of both the Public Employment Service and the Federal Migration Service - within three days of the employment agreement's conclusion, and also the local tax office - within ten days of its conclusion.

Failure to comply with the requirement to file the above notifications on employment of a foreign national can result in the imposition of additional administrative fines - in the amount of up to RUB 50,000 (currently approximately USD 1,660) on the employer's officers, and

up to RUB 800,000 (currently approximately USD 26,600) on the employer or, in a worst case scenario, even administrative suspension of the employer's operations for up to 90 days.

Further Information

The procedure and the documentary requirements for the employment of foreign nationals in Russia are subject to constant change and should be verified in advance on a case-by-case basis.

Baker & McKenzie's Moscow office provides its clients with legal alerts on the latest amendments to the Russian migration and employment law on a regular basis.

The Kingdom of Saudi Arabia

Executive Summary

The process of employing a foreigner in the Kingdom of Saudi Arabia (the “Kingdom”) is relatively complicated compared to other countries, but is expected to be simplified as a result of the Kingdom’s accession to the World Trade Organization (the “WTO”).

Citizens of member countries to the Gulf Cooperation Council (“GCC”) - Saudi Arabia, Qatar, Oman, Yemen, United Arab Emirates and Kuwait - are allowed to enter into each member country’s territory without the need to obtain an entry visa. In some cases, presenting a national identification card suffices.

Key Government Agencies

With respect to the employment of foreigners, the Ministry of Labor is responsible for work permits.

The Ministry of the Interior’s Directorate General for Passports is responsible for issuing residence permits.

Once the required authorizations from the relevant agencies are obtained, the Ministry of Foreign Affairs through Saudi Arabian embassies and consulates will be the first contact point with the employee and will be responsible for the issuance of visas.

The process of employing a foreigner in the Kingdom is relatively complicated compared to other countries, but is expected to be simplified as a result of the Kingdom’s accession to the WTO.

Business Travel

Business Visit Visa

A Business Visit Visa may be issued based upon a letter of invitation by a Saudi person for business reasons. The issuer of the invitation letter (“Sponsor”) would normally be required to sponsor the holder of the Business Visit Visa during the stay in the Kingdom.

The original purpose of Business Visit Visas is to allow foreigners to enter into the Kingdom for conducting limited business transactions with the Sponsor. By way of example, this would include negotiations of agreements, or holding business meetings generally. In practice, however, business visit visas are very commonly used to facilitate rendering short term or intermittent contractual services (e.g., managerial, professional, technical or consultancy services) and the practice has been historically tolerated by the Saudi authorities.

Beyond this limited scope, Business Visit Visas do not grant foreigners the right to work or reside in the Kingdom.

Visa Waiver

Citizens of Bahrain, Kuwait, Oman, Qatar and United Arab Emirates are not required to have visas to visit the Kingdom.

Training

There is no visa designed expressly for training, but the visas discussed for employment assignments might be appropriate in some circumstances.

Employment Assignments

As a general rule, foreigners may not come or be brought to the Kingdom to work unless the prior approval of the Ministry of Labor is obtained.

In order for the required permits to be issued, the following conditions must be met:

- The foreigner must have entered the country legally. For a non-resident, this would require obtaining the Work Visa;
- The foreigner must possess vocational skills or educational capabilities needed in the Kingdom that are either lacking or insufficiently available;
- The foreigner must have a contract with a Saudi employer or a non-Saudi employer authorized to do business in the Kingdom; and
- The foreigner must be under sponsorship of an employer.

In relation to this last requirement, a foreign employee may not leave the current position with his employer unless the approval of the current employer is obtained to transfer sponsorship to the prospective new employer. This rule governs all foreigners working in the country, regardless of their time in the Kingdom.

As a pre-requisite for obtaining the Work Visa, the employer should have an “immigration file” opened with the Ministry of Interior. The immigration file typically contains up-to-date information on the residency status of each of the employer’s expatriate manpower. Once the immigration file is opened, an employer can thereafter obtain the Work Visa after obtaining the Ministry of Labor’s approval, who will in turn instruct the Ministry of Foreign Affairs to have the relevant Saudi embassy issue the required visa.

At that point, the prospective employee will be required to present the following to the relevant Saudi embassy:

- A valid employment contract in Saudi Arabia (which has to be either with a Saudi citizen, company or a foreign entity licensed to conduct business in the Kingdom);
- Educational diplomas or certificates by the prospective employee;
- Medical reports; and
- 3 recent passport photographs.

After the Work Visa is issued, the employee will be required to obtain a residency permit (“igama” or “iqama”) and a work permit before commencing work in the Kingdom. The issuance of the aforementioned permits begins with filing an application with the Ministry of Labor. After its approval, the Ministry of Labor will forward the application to the Ministry of Interior for the issuance of the required residency permit.

Work Temporary Visa

Recently, Saudi Arabia introduced a new type of visa – the temporary visit work visa. The purpose of this visa is to allow the employee of a foreign entity, which has no presence in Saudi Arabia, to perform temporary work for its clients in Saudi Arabia.

Seasonal Employment Visa

This type of visa is available for those who wish to enter the Kingdom during the annual pilgrimage (“hajj”) season for the purpose of filling certain required positions.

The procedures for issuing a Seasonal Employment Visa starts with filing an application with the Ministry of Labor by the Saudi employer requesting permission to allow certain expatriate workers to enter the Kingdom during the pilgrimage season only for carrying out certain tasks. If the Ministry of Labor approves the application, the prospective employee will be required to present to the Saudi embassy in the relevant country a valid employment contract in applicant's country, in addition to an attestation by the worker that the purpose of coming to the Kingdom is solely for work and not the performance of pilgrimage.

Group Employment Visa

In order to facilitate bringing foreign workers to the Kingdom, it is currently possible for employers to apply for a Group Work Visa, also referred to as "block visa." The objective of the Group Employment Visa is to enable business owners to process multiple visas simultaneously for certain positions without the need to initially identify the prospective employees by name.

The application is usually submitted on the basis of the number of workers required for each profession. Upon the approval of the application, the required number of visas will be issued and copies of which will be sent along with other documentary requirements to the relevant Saudi embassies. Thereafter, the prospective employee will submit the passport to the Saudi embassy in order to have the passport stamped with the required visa.

Other Comments

Foreigners who overstay their visit in the Kingdom are subject to monetary fine and incarceration pending deportation proceedings. It is important to clarify from authorities upon arrival as to the permitted lengthy of stay, which is not necessarily the same as the validity date of the visa itself.

Visitors to the Kingdom must abide by the country's Islamic laws and regulations, and respect its society's values and traditions.

A medical report showing that the foreigner is free of any contagious disease is generally required for work and residence permits.

Singapore

Executive Summary

Singapore's receptiveness to foreign talent is evident in its immigration laws, which offers many solutions to help employers of foreign nationals. Such solutions range from temporary, nonimmigrant visas to permanent, immigrant visas, although requirements, processing times, employment eligibility, and benefits for accompanying family members necessarily vary by visa classification.

Key Government Agencies

The Work Pass Division ("WPD") of the Ministry of Manpower ("MOM") facilitates and regulates the employment of foreign nationals in Singapore. This is achieved through the administering of three types of Work Passes, namely: Employment Passes, S Passes and Work Permits.

The Immigration & Checkpoints Authority ("ICA") is a government agency under the Ministry of Home Affairs. ICA has brought together the former Singapore Immigration & Registration ("SIR") and the enforcement work performed by the former Customs & Excise Department ("CED") at the various checkpoints. ICA is responsible for the security of Singapore's borders against the entry of undesirable persons and cargo through our land, air and sea checkpoints. ICA also performs other immigration and registration functions such as issuing travel documents and identity cards to Singapore citizens and various immigration passes and permits to foreigners. It also conducts operations against immigration offenders.

Other relevant agencies may include SPRING Singapore, a governmental board overseeing Singapore's productivity standards

and quality (“SPRING”), the Economic Development Board (“EDB”) and the Monetary Authority of Singapore (“MAS”).

Current Trends

In the light of the West’s current economic downturn, Asia, which has emerged relatively unscathed from the sub-prime debacle, is now an obvious destination for business professionals looking to relocate and participate in its booming economies.

Singapore, with its policy of welcoming foreign talent, is well placed to be the centre of attraction. Besides offering ample financial opportunities, the city-state boasts of a high standard of living in the essential areas of health care, education, accommodation, order and security. As a further boost to Singapore’s efforts to be an Asian hub, the authorities simplified its immigration laws to facilitate access by the globe-trotting talent.

Employers of foreign nationals are thus presented with the opportunity to grow and ride the Asian economic wave, with the possibility of reaping significant benefits. To do that, employers must first familiarize themselves with the immigration laws relevant for global mobility assignments. In this regard, this Singapore chapter offers an introductory insight.

Business Travel

Visitor Visa

Foreigners visiting for short business negotiations and discussions may generally enter Singapore on a visit pass. Visit passes are issued on arrival in Singapore and the permitted period of stay is usually either 7, fourteen, thirty or ninety days. Extensions are considered on a case-by-case basis.

With the limited exception in some cases for Diplomatic and Official passport holders, foreigners holding travel documents issued by the following countries, however, will require entry visas prior to arrival in Singapore:

Afghanistan	Algeria	Bangladesh
Cambodia	Common Wealth of Independent States ⁴	Egypt
India	Iran	Iraq
Jordan	Lebanon	Libya
Morocco	Myanmar	Nigeria
Pakistan	People's Republic of China	Saudi Arabia
Somalia	Sudan	Syria
Tunisia	Yemen	

In addition, those holding Hong Kong Special Administrative Region Documents of Identity, Refugee Travel Documents issued by Middle-East countries, Palestinian Authority Passports, Temporary Passport

⁴ Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

issued by the United Arab Emirates, and Macau Special Administrative Region Travel Permit will also require an entry visa.

Professional Visit Pass

The following groups of foreigners who wish to take up short-term professional assignments (not more than 3 months) in Singapore will require a professional visit pass from the MOM:

- Foreigners who enter Singapore to conduct or participate in conferences, seminars, workshops or gatherings of a racial/communal, religious, cause-related or political nature;
- Foreign religious workers coming to Singapore to give religious and other related talks;
- Foreign journalists and reporters, including accompanying crew members, who are in Singapore to write a story or cover an event; and
- Foreign artists performing at nightclubs, lounges, pubs or other similar entertainment outlets.

An application for a professional visit pass takes approximately two weeks to process. The application must be submitted through a local sponsor (*i.e.*, a Singapore registered organization). For performing artists, the local sponsor is required to post a security bond and deposit of S\$3,000 in the form of a cashier's order. The security deposit will be refunded after the artist's departure from Singapore is confirmed and provided there has been no breach of the conditions stipulated in the security bond.

Miscellaneous Work Pass

- A foreigner who is involved in activities directly related to the organization or conduct of any seminar, conference, workshop, gathering or talk concerning any religion, race or community, cause, or political end;
- A foreign religious worker giving talks relating directly or indirectly to any religion; and
- A foreign journalist, reporter or an accompanying crew member not supported/sponsored by any Singapore Government agency to cover an event or write a story in Singapore.

Work Permit (Performing Artists)

This is applicable to foreign artistes performing at night-clubs, lounges, pubs, restaurants, hotels and country clubs.

Waiver

The professional visit pass requirement is waived for the following groups of foreigners traveling to Singapore on short-term professional assignments:

- Artists such as those in cultural troupes and performances;
- Camera crew, film directors, actors, actresses, foreign models and photographers on location shooting;
- Professionals, speakers and lecturers who are here to attend, conduct or participate in seminars, workshops or conferences (this exemption does not apply to such events which are

racial/communal, religious, cause-related or political in nature);

- Professional artists who wish to exhibit their works;
- Cultural missions;
- Sportsmen who are engaged by local sports clubhouses or who are here for sports competition/events;
- Exhibitors in exhibitions or trade fairs; and
- Journalists, reporters or accompanying crew members who are supported/sponsored by the Singapore Government agencies to cover or write a story in Singapore.

These above foreigners are allowed to carry out their assignments within the validity of the visit pass granted to them at the point of entry upon their arrival in Singapore.

The waiver of the professional visit pass requirement does not exempt the listed foreigners from seeking the approval of the appropriate authorities concerned. For example, a foreign artist will still have to apply to the police for a Public Entertainment License to exhibit his works in Singapore. If these foreigners require a longer stay in Singapore and the total period (including the visit pass granted to them upon arrival in Singapore) does not exceed 3 months, they may apply for an extension of stay. Those who require more than 3 months stay will have to apply for a work pass from the MOM.

Work Pass Exempt Activities

Foreigners can enter Singapore and perform certain activities for short durations without a Work Pass. Foreigners who are exempted from

Work Pass requirements would include those performing the following activities:

- Performing as an actor, a singer, a dancer or a musician, or involvement as a key support staff, in an event supported by the Government or any statutory board constituted by or under any written law for a public purpose;
- Performing as an actor, a singer, a dancer or a musician, or involvement as a key support staff, in an event which is held at a performance venue to which the public or any class of the public has access whether gratuitously or otherwise (including any theatre or concert hall), but not at any bar, discotheque, lounge, night club, pub, hotel, private club or restaurant;
- Journalism activities (including media coverage for events or media tours) supported by the Government or any statutory board constituted by or under any written law for a public purpose;
- Activities relating to any sports competition, event or training (including involvement as a sportsman, a coach, an umpire, a referee or a key support staff) supported by the Government or any statutory board constituted by or under any written law for a public purpose, other than being engaged as a sportsman of any sports organization in Singapore pursuant to a contract of service;
- Participating in any exhibition or trade fair as an exhibitor or a trader. Note that the Work Pass Exempt Activity of Exhibitions or Trade Fairs does not include trade fairs which require a Trade Fair Permit issued under Section 35 of the Environmental Public Health Act, Cap 95, or the activities at any makeshift stall therein (*e.g.*, Night Markets);

- Activities relating to any location filming or fashion show (including involvement as an actor, a model, a director, a member of the film crew or technical crew, or a photographer);
- Activities relating directly to the organization or conduct of any seminar, conference, workshop, gathering or talk which:
 - does not relate, directly or indirectly, to any religious belief or to religion generally;
 - does not relate, directly or indirectly, to any race or community or to race generally; and
 - is not cause-related or directed towards a political end, including involvement as a speaker, moderator, facilitator or trainer.
- Providing expertise or specialized skills, such as the commissioning or audits of new plant and equipment (including any audit to ensure regulatory compliance or compliance with one or more standards), or the installation, dismantling, transfer, repair, or maintenance of any equipment, processes or machine, whether in relation to a scale up of operations or otherwise. Note that in relation to the installation, dismantling, repair or maintenance of any equipment or machine, the expertise or specialized skills must be of a kind that is not available in Singapore or is to be provided by the authorized service personnel of the manufacturer or supplier of the equipment or machine (as the case may be).
- Providing arbitration or mediation services (including involvement as an arbitrator or a mediator) in relation to any case or matter which:

- does not relate, directly or indirectly, to any religious belief or to religion generally;
- does not relate, directly or indirectly, to any race or community or to race generally; and
- is not cause-related or directed towards a political end.

Foreigners performing Work Pass Exempt Activities are required to submit an e-Notification to the MOM before engaging in these activities. They can perform these activities for the duration of their short term visit passes subject to a maximum of sixty days. Beyond that, they will need to obtain a Work Pass. Those carrying out Work Pass Exempt Activities without notifying the Ministry of Manpower (MOM) can be prosecuted under the Employment of Foreign Manpower Act.

In addition, the waiver of Work Pass requirement does not exempt foreigners from having to comply with other specific legal requirements in Singapore.

Training

Training visit passes are available to foreigners coming to Singapore to undergo training. An application for a training pass takes approximately 3 weeks to process. The application must be submitted through a local sponsor (i.e., a Singapore registered organization).

Training Employment Pass

Foreigners undergoing practical training attachments for professional, managerial, executive or specialist jobs in Singapore are required to apply for a Training Employment Pass.

Undergraduates undergoing their training attachment in Singapore must be part of the trainee's degree programme from an acceptable educational institution. Companies may also bring employees from their foreign office/subsidiaries to Singapore for professional or executive training. Intra-company trainees should hold a degree or diploma. Applicants should earn a fixed monthly salary of more than S\$2,500 and/or hold acceptable tertiary/professional qualifications.

Training Work Permit

The Training Work Permit (WP) is for unskilled/semi-skilled foreign trainee undergoing training in Singapore for up to 6 months and no extension is allowed.

The following foreign trainees will not qualify for a Training WP:

- Non-Malaysians on Social Visit Passes. Such trainees can enter Singapore only after In-Principle Approval has been granted by the Work Pass Division; and a security bond has been executed by the employer.
- Those who are paid a monthly basic salary of more than \$2,500 and/or hold acceptable tertiary/professional qualifications.

Instead, these trainees should apply for a Training Employment Pass.

Employment Assignments

In General

All matters pertaining to the employment of foreigners in Singapore come under the review of the MOM.

The MOM adopts a graduated approach towards foreign talent, offering the most attractive terms to those who can contribute most to the economy, to help draw them to Singapore.

Top talent including professionals, entrepreneurs, investors and talented specialists, such as world-class artists and musicians, are allowed to come to Singapore with their spouses, children, parents and parents-in-law. This privilege, however, is not extended to all workers.

The Employment Pass

Both the “P” and “Q” Passes are categories of the Employment Pass.

The “P” Pass

“P” passes are issued to foreigners who hold acceptable tertiary/professional qualifications and who are seeking professional, administrative, executive or managerial jobs in Singapore or who are entrepreneurs or investors.

There are two types of “P” passes:” P1” pass for those who earn S\$7,001 and above per month; and “P2” pass for those who earn S\$3,501 up to S\$7,000 per month.

The spouse and children of “P” pass holders (both “P1” and “P2”) are eligible for Dependent passes to stay in Singapore and their parents and parents-in-law are eligible for Long-Term Social Visit Passes.

The “Q1” Pass

“Q1” passes are meant for foreigners who earn S\$2,501 up to S\$3,500 per month and possess acceptable degrees, professional qualifications or specialist skills.

The spouse and children of “Q1” pass holders are eligible for dependent passes to stay in Singapore. However, the parents and parents-in-law of “Q1” pass holders are not eligible for long-term social visit passes.

The “S” Pass

The “S” pass is a new category of work pass that replaces the “Q2” Pass effective July 1, 2004. It is meant for foreigners whose basic monthly salary is at least S\$1,800. Applicants for “S” passes are assessed on a points system, taking into account multiple criteria including salary, education qualifications, skills, job type and work experience. A monthly levy of S\$50 per month also applies and there is a 5% cap on the number of “S” pass holders in each company based on the company’s number of local workers and work permit holders.

The spouse and children of “S” pass holders are eligible for dependent passes to stay in Singapore if the basic monthly salary is equal to or more than S\$2,500.

Additional Information

The “P”, “Q1” and “S” passes are generally valid for up to 2 years and may be renewed upon expiry for a period usually of up to 3 years. The MOM may, at its discretion, issue exceptional candidates with renewable passes valid for up to 5 years.

Application for an employment pass is submitted to the Employment Pass Department of the MOM. Processing time is approximately 3 weeks. Upon approval of the application, the MOM will then advise the category under which the pass has been granted (*i.e.*, “P1”, “P2”, “Q1” or “S”).

If an applicant is required to commence employment in Singapore before the employment pass is approved, it is possible to request a

temporary employment pass, valid usually for 1 month. A temporary employment pass is not automatically given but is subject to the MOM's consideration and approval. A temporary employment pass is not available for "S" pass applicants.

The Short-Term Employment Pass may be applied for foreigners who wish to work in Singapore on a specific project or assignment up to a maximum of 1 month. The Pass will be issued on a 1-time and strictly non-renewal basis. You may apply for Short-Term Employment Pass if you earn a monthly basic salary above S\$2,500 and hold acceptable tertiary/professional qualifications.

EP Online

This is a one-stop portal for companies and organizations to perform transactions such as:

- New application for Employment Pass (excluding Sponsorship scheme), S Pass*, Dependant's Pass, Long-Term Visit Pass, Letter of Consent and Training Employment Pass (not applicable to Employment Agencies);
- Renewal application Renewal application for Employment Pass, S Pass, Dependant's Pass, Long-Term Visit Pass and Letter of Consent;
- Check application and renewal status;
- Issuance of S Pass;
- Cancellation of Employment Pass, S Pass and related passes;
- View rejection reasons for most of the unsuccessful applications; and

- Printing of application outcome letter, S Pass Issuance Notification Letter

Business employers who have not applied for S Passes before are required to have a company CPF Account for which Industrial Classification has been done.

Registration for EP Online

Registration is simple. The following documents must be submitted to the Work Pass Division in order to register an account under EP Online:

- Application for EP Online Services Access;
- Declaration Form for EP Online User Agreement; and
- Authorization letter from the company.

An Administrative User must be appointed and this person should be either a Singapore Citizen, Singapore Permanent Resident or Work Pass holder. This is because a SingPass is required to login and only these groups of people are eligible to apply. For your convenience, the law firm will be happy to take on the role of Administrative User.

Once the above documents have been submitted, it will take about 7 working days to know whether registration is successful. If successful, the Admin User will have access to the online account and will be able to perform transactions immediately.

Applications submitted via EP Online takes approximately 7 working days to be processed. The main benefit of EP Online is the processing time - it typically takes an average of 7 working days from the day of submission before an outcome is known. Comparatively, manual applications can take a month or more. EP Online operates in almost

the opposite manner to manual applications. New applications made via EP Online are based on facts provided by the applicant.

If these facts meet the MOM's criteria, an In-Principal Approval ("IPA") letter will be issued. In order for the actual pass to be collected however, hard copies of the supporting documents verifying what was declared needs to be furnished. In this sense, another benefit is that it gives the applicant time to search/obtain their supporting documents pending the submission of facts.

EntrePass

The EntrePass is an Employment Pass for foreign entrepreneurs who would like to start businesses in Singapore. It is jointly determined by the MOM and SPRING. Applicants are to submit their applications to the MOM. All applications are assessed by SPRING. The MOM will issue Employment Passes for successful applicants. All public queries and appeals can be directed to both the MOM and SPRING.

A foreign entrepreneur who is ready to start a new company/business and will be actively involved in the operation of the company/business in Singapore can apply for an Employment Pass under the EntrePass scheme. At the point of submission for the EntrePass application, the applicant must not have registered the business with the Accounting and Corporate Regulatory Authority ("ACRA") for longer than 6 months.

The proposed business venture must not be engaged in illegal activities. In addition, businesses not of an entrepreneurial nature (e.g., coffeeshops, hawker centers, food courts, foot reflexology, massage parlors, karaoke lounges, money changing/remitting, newspaper vending, geomancy, tuition services) will not be considered for an EntrePass.

The Personalized Employment Pass

The MOM introduced a Personalized Employment Pass (“PEP”), effective January 1, 2007. The PEP is granted to suitable Employment Pass holders or foreigners who have graduated from local institutions of higher learning, and have worked in Singapore for a period of time.

The current Employment Pass is linked to a specific employer and any change in employers requires a fresh application for an EP. As such, unless an EP holder is able to find employment with a new company, he may be required to leave Singapore if he does not hold any other relevant entry permits, such as a social visit pass. In contrast, the PEP is linked to the individual employee and will be granted on the strength of an individual’s merits. The PEP will allow holders to remain in Singapore for up to 6 continuous months in-between jobs. PEP holders can generally take on employment in any sector, except that some jobs may require prior permission.

The following groups of EP holders will be eligible for a PEP, if they had earned a basic salary of at least S\$30,000.00 in the preceding year:

- P1 and P2 pass holders that have at least two years’ working experience on a P Pass;
- Q1 pass holders with at least five years’ working experience on a Q1 Pass; and
- Foreign students from institutions of higher learning in Singapore with at least 2 years’ working experience on a P or Q1 Pass.

The MOM will be flexible in considering individual cases that do not meet the minimum criteria but which, based on the individual circumstances, merit the issuance of the PEP.

The PEP will be valid for five years and it will be non-renewable. The minimum salary requirement of S\$30,000 will continue to apply throughout the 5-year validity of the PEP. A PEP holder will retain the dependants' privileges of his original EP pass or current eligibility at the point of PEP application, whichever is higher. P1, P2 and Q1 Pass holders are eligible to bring their spouse and children under the age of twenty one into Singapore on Dependant's Passes. A PEP Pass holder can also bring his or her parents and parents-in-law into Singapore on Long-Term Social Visit Passes. Those employees who switch to higher-paying jobs may apply for the corresponding dependents' privileges.

PEP holders and their employers will need to keep the MOM informed of any changes in the PEP holders' employment status and contact particulars and will have to agree to reveal their annual basic salary to the MOM. The processing time for a PEP application is estimated to be about 2 weeks from submission.

PEP Online

Existing or former Employment Pass holders may apply for the PEP via PEP Online using their SingPass. Once submission has been made, it will take about 2 weeks for the application to be processed. The outcome will be posted to the applicant's residential address.

The PEP is also eligible to foreigners who do not hold/have not held an Employment Pass so long as the last drawn fixed monthly salary overseas was at least S\$7,000 and this should not be more than 6 months from the time of application.

Work permit or R Pass

A work permit or "R" pass may be issued to lesser skilled or unskilled foreign workers (*e.g.*, foreign factory workers, construction workers, domestic maids, *etc.*) who earn S\$1,800 or less per month. It is,

however, generally necessary for the employer to show that there is a shortage of local labor and/or that no suitably qualified Singaporeans are readily available.

Generally, “R” passes are issued for a period of 2 years depending upon the nationality and qualifications of the applicant, as well as the type of industry in which the applicant will be employed.

“R” passes will be issued to semi-skilled foreign workers with a Level 3 National Technical Certificate or other suitable qualifications as well as unskilled foreign workers.

Foreign workers holding “R” passes will not be allowed to bring their immediate family members to live with them in Singapore.

Companies employing foreign workers are usually required to pay a foreign worker levy, the amount of which varies from industry to industry and depending on whether the worker is skilled or unskilled.

An application for a work permit or “R” pass is submitted to the Work Permit Department of the MOM and takes approximately 1 to 7 days to process.

Other Comments

Global mobility today has wider connotations than merely working abroad. The phrase also encapsulates the idea of taking up permanent residence in another country and, ultimately, citizenship.

Non-Singaporeans who are below fifty years of age can become Singapore permanent residents (“PRs”) by obtaining an Entry Permit (an application for an Entry Permit is an application for PR). Applications by foreigners who are fifty years of age and above will be considered on a case by case basis. The grant of PR is at the sole

discretion of the Singapore authorities and no reasons or explanation will be given in the event that an application is not approved.

Eligibility is generally based on family relationships, employment or investment. Singapore uses a points system that considers the following factors:

- Type of work pass;
- Duration of stay in Singapore;
- Academic qualifications;
- Basic monthly salary;
- Age; and
- Kinship ties in Singapore.

To maintain permanent resident status, all permanent residents who intend to travel out of Singapore must first obtain re-entry permits and must return to Singapore within the validity period of the permit. A Singapore PR will lose his or her PR status if he/she remains outside of Singapore without a valid Re-Entry Permit.

A re-entry permit is usually valid for multiple journeys for a period of either 5 or ten years. A re-entry permit may not be issued or renewed if the permanent resident does not continue to be gainfully employed in Singapore or does not maintain sufficient connections with Singapore.

Singapore citizenship may be acquired by birth, descent, registration or naturalization. The waiting period for permanent residents to qualify for Singapore citizenship is currently 2 to 6 years. Applicants must be of good character, financially able to support themselves and their dependents, and intend to reside permanently in Singapore. The evaluation criteria takes into consideration how the rest of the applicant's family, for example the applicant's spouse and children, can integrate into Singapore society, evaluating beyond the immigrant's demonstrated educational qualifications and immediate economic contributions. The decision to confer citizenship is discretionary and will be decided on the merits of each case. Dual citizenship is not permitted, so applicants must be prepared to renounce citizenship for all other countries..

All male permanent residents and citizens in Singapore, aged sixteen to forty years (or fifty years for officers and members of certain skilled professions) are subject to the Enlistment Act. Male ex-Singapore citizens and ex-Singapore permanent residents who are granted Singapore permanent resident status are liable to be called upon for national service.

A first generation permanent resident is automatically exempt from national service. However, he will be required to register himself with the Central Manpower Base, if he is below forty years of age, upon which he will receive an exemption notice. The male children of a first generation permanent resident are, however, liable for national service.

Slovak Republic

Executive Summary

The Slovak Republic provides many solutions to help employers of foreign nationals. These range from temporary, non-immigrant visas to permanent immigrant visas. Often, more than one solution is worth considering. Requirements, processing time periods, employment eligibility and benefits for accompanying family members vary by visa classification and purpose of stay. The visa application procedure may be lengthy in some cases. Therefore, application for long term temporary residency permit should be filed well in advance.

Key Government Agencies

The relevant Slovak Office of labor, social and family affairs with respect to a place of job is responsible for the processing of a work permit. The Foreigners Police Service is responsible for visa processing with the assistance of Slovak consular posts abroad. Most non-EU country citizens' visa require the foreigner to obtain the work permit to be employed in a specific job, time, place and for a specific employer, *i.e.* before applying for Slovak employment visa (temporary residence permit for employment purposes). Visas are issued by Slovak embassies and consulates general abroad or, under extraordinary circumstances (e.g. humanitarian reasons), by the Slovak police at a border crossing point. The visa entitles the foreign national to transit through or to stay in the Slovak Republic and/or Schengen area for the period of validity of the respective visa. The length of stay and expiry date of the visa is specified on the visa sticker.

Current Trends

Border protection activities and enforcement of immigration-related laws that impact employers and foreign nationals increased not only

once the Slovak Republic joined the EU, but have currently further increased because of high unemployment rates. Employers of foreign nationals unauthorized for such employment are being more and more subjected to civil penalties and the same with respect to such foreign nationals. In addition, it is more difficult to obtain a work permit and it must be proved that it is impossible to employ for the respective job a Slovak citizen prior such job may be offered to a non-EU member country citizen.

Slovak authorities require that non-EU country citizens possess a passport that is valid for three months beyond the intended stay in the Slovak Republic (i.e. beyond the applied visa/residency permit period). Additionally, proof of finances to bear the costs of stay and sufficient health insurance is required.

The border police have a right to request proof of a travel medical insurance policy covering all hospitalization and medical treatment costs in the Slovak Republic. We recommend checking a list of accepted health insurance companies sufficiently prior to the arrival.

Also, the border police have a right to request evidence of funds available to pay for a stay in the Slovak Republic. Foreigners can demonstrate sufficient funds for example by means of cash, a bank account statement from the Slovak branch/subsidiary of a bank.

For example, according to Slovak law, a US citizen entering the Slovak Republic for tourist purposes may only stay on the territory of the Slovak Republic and Schengen countries for a period of up to 3 months within any 180 day period. If he/she interrupts his/her stay on Schengen territory (including the Slovak Republic) within these 180 days, the period of stay on Schengen territory (all countries together) is counted together with any 180 days (i.e. exempting only those days when he/she is out of Schengen territory). However, any US citizen is prohibited to work on the Schengen territory without a “working” visa.

Generally, foreign nationals who have been granted a short-term or long-term visa, or who are exempt from the visa requirement upon entry, are obligated to inform, within three working days of their arrival, a competent police department of the commencement, place and anticipated length of their stay, citizens of EU member countries within 10 working days (visitors staying in hotels are registered automatically). Foreign nationals (EU as well as non-EU) who have been granted a residency permit are always obligated to notify commencement of their stay in the Slovak Republic

After being granted a Slovak visa, foreigners are obligated to then report all changes to the locally appropriate Foreigners Police without delay. Changes that trigger reporting requirements include for example:

- Change of passport;
- Change of residence address in the Czech Republic;
- Change of marital status;
- Change of name;
- Change of employer - also requires prior change of the work permit;
- Reporting a loss of any immigration document.

Foreigners are obligated to, upon prior request of local police, for example:

- Prove their identity with a valid passport or a residence permit, if requested by police, and prove that their stay in the territory is legitimate, prove sufficient financial means, purpose of stay and health insurance;

- Submit to such actions as taking fingerprints, video recording, medical examination, etc. as provided by law, if requested by police.

Violation of immigration rules may result in a fine, deportation, prohibition of stay and, in special cases, criminal proceedings.

Border protection activity and enforcement of immigration-related obligations have recently increased due to high unemployment rates. Employers of foreign nationals unauthorized for such employment are increasingly subjected to civil penalties.

Please note that there is no legal entitlement for issuance of a work permit or Slovak visa or residency permit - it is solely at the discretion of local authorities.

Schengen visa: airport transit visa

Generally, a person is able to stay in the international transit area at the Slovak airport without a Slovak visa while waiting for a connecting flight. However, some nationalities are required to have a valid visa, even if they do not leave the international transit area. The Airport Transit Visa only authorizes the holder to transit through the airport's international transit area.

Schengen visa: entry visa

The visa entitles its holder to enter and stay in the Schengen area for not more than a total of 90 days within a six-month period subsequent to the date of the first entry. This visa may be issued for one or several entries (single entry and multiple entry visas).

National visa type

National (long-stay) visa may be issued in relation to the granted residence permit or in connection with the Slovak Republic's commitments under international treaties, or for the benefit of the Slovak Republic.

Temporary Residency Permit

For stays longer than 90 days during six months period, a foreigner must apply for temporary residency permit at a Slovak Embassy or Consulate General, prior to entering the Slovak Republic. The temporary residency permit is differentiated by purpose of stay, *e.g.* employment, business activities, joining a family member, study.

The temporary residency permit is always issued for one purpose only, for the period of duration of such purpose but for a maximum of 2 years. It may be repeatedly renewed. Typical allowed purposes – employment, business, study, joining his/her family.

The purpose of stay must be proved when applying for this temporary residence permit.

Permanent Residence Permit

A permanent residence permit entitles foreign nationals, who have been granted the permit, to stay in the territory of the Slovak Republic and to travel abroad and back within the time period for which the permit has been granted by a competent Slovak police department. Holders of permanent residence permits are not obligated to obtain work permit for the purposes of their work in the Slovak Republic.

This is typically granted for foreigners, who are family members of Slovak citizens, or to children of foreigners having Slovak permanent residency permit.

Tolerated Residence

A tolerated residence permit is typically granted by a competent police department based on an application by a foreign national in case he/she is prevented, by a reasonable and unforeseeable obstacle, from leaving the Slovak Republic at the time of expiry of his/her visa or residence permit, and in few other cases. Tolerated residence is awarded for not more than 180 days (but for necessarily extent only); it may be repeatedly extended if the reasons deemed decisive for its award continue to exist.

Visa Waiver

EU citizens do not need a work permit or visa to stay or work in the Slovak Republic. They are subject to the registration requirement only. Some non-EU country citizens traveling to the Slovak Republic as tourists only are not required to obtain a Slovak visa, provided that their stay does not exceed the stipulated number of days. These individuals are only subject to the registration requirement.

Citizens of the following countries are allowed to arrive in the Slovak Republic for tourist purposes without a visa (i.e., if their stay is not for gainful/employment purposes and limited to 90 days in any 180 days period): Andorra, Antigua and Barbuda, Argentina, Bahamas, Barbados, Brazil, Guatemala, Honduras, Chile, Croatia, Israel, Japan, South Korea, Canada, Malaysia, Mauritius, Mexico, Monaco, New Zealand, Panama, Paraguay, Salvador, San Marino, Seychelles, Singapore, USA, Saint Christopher and Nevis, Uruguay, and Venezuela.

Training

The same options apply as for employment assignments (see below).

Local Employment and Employment Assignments

EU country citizens do not need a work permit or visa to stay or work in the Slovak Republic. They are subject to the registration requirement only.

Other foreigners may be employed, provided that they have been granted a Slovak work permit and a residence permit (for employment purposes). Certain exemptions apply.

The employer (recipient employer) may be a legal entity registered in the Slovak Republic, a foreign company's Slovak branch office, or a foreign company authorized to perform the respective business activities in the Slovak Republic. The employer must also prove that the job cannot be filled by Slovak workers.

An application for a work permit for a foreigner is filed at the local Labor Office. Foreigner, who is subject to work permit obligation, applies for work permit himself/herself or through his/her future employer using a work permit application form. Thereafter, the foreigner may use the approved work permit to apply for a visa at a Slovak Embassy or consular post abroad.

Work permits are valid only for employment, the specific job, site and the employer listed on the permit. A change in any of these will require a new work permit. Work may be commenced once both, work permit and residency permit, are valid and effective.

Typical work permit exemptions - A work permit to employ a non-EU country citizen in the Slovak Republic is not required for example if the employee has:

- A Slovak permanent residency permit;

- A Slovak temporary residency permit for study purposes and his/her work does not exceed 10 hours per week or its equivalent number of days or months per year;
- A Slovak temporary residency permit for research and development and his/her teaching activities do not exceed 50 calendar days per a calendar year;
- An employment relationship on the territory of the Slovak Republic that does not exceed seven consecutive calendar days or in total thirty calendar days per a calendar year based on the assumption that he/she is: 1) a pedagogical employee, academic employee of an university, scientific, research or development employee participating in a professional scientology event; or 2) performance artist participating in a performance event; or 3) a person ensuring supply of goods or provision of services or supplies goods or assembles in the Slovak Republic based on a commercial contract or provides guarantee or reparatory works;
- Been exempted from a work permit requirement based on an international treaty legally binding in the Slovak Republic;
- Been seconded to the Slovak Republic by the employer (employer residing in other EU member state) within services provided by this employer.

However, a visa is, in most cases, required no matter that the exemption from work permit applies.

Other Comments

It is recommended to insist on a passport being stamped with an entry stamp at the Slovak border whenever a foreigner crosses the border where it is possible.

All Slovak immigration procedures are time consuming and administratively demanding; therefore, advance planning is key.

Spain

Executive Summary

Unfortunately, Spanish immigration regulations are not fully adapted to the great immigration increase that has taken place in the country; it offers several alternatives to the different situations an employer of a foreign (non-EU) national may encounter. These range from temporary, nonimmigrant visas to temporary work and residence authorizations and permanent residence authorizations. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and procedures for accompanying family members vary depending on the situation.

Key Government Agencies

There are several public institutions involved in the processing of visas and/or work and residence authorizations. The Ministry of External Affairs, Directorate of Consular Affairs (the “Ministry”) is responsible for visa processing at Spanish consular posts abroad. Spanish Consulates abroad have the capacity of directly granting temporary visas for business visitors, students and tourists. Such types of visas would not entail residence status for the foreigner.

All residence visas or labor related visas first require the approval of the Government Delegations, Sub-delegations or Autonomous Community Authority located at the province where the foreign national will live in Spain. Regarding non-lucrative or non-labor (i.e., that do not authorize to work) residence visas, the applicant must file the petition at the Spanish Consulate that will forward it for approval to Spain to the relevant Government Delegation/Sub-delegation/Autonomous Community Authority with jurisdiction over the applicant’s future domicile in Spain. With respect to work related visas, they require first the approval of a work and residence authorization petition by the prospective employer in Spain.

Depending on the characteristics of the Spanish company employing the foreign national, the petition must be filed either at the “large companies unit” of the State Secretariat of Immigration of the Labor Ministry or filed with the Government Delegation/Sub-delegation/Autonomous Community Authority.

Inspection and admission of travelers is conducted by the Customs and Border Protection agency at Spanish ports of entry and pre-flight inspection posts. Investigations and enforcement actions involving employers and foreign nationals is the focus of both the Labor Ministry Inspectorate and the Foreigner’s Brigade dependent of the National Police department.

Current Trends

Border protection activity and enforcement of immigration-related laws that impact employers and foreign nationals have increased in Spain and in Europe. The Government is making bigger efforts in avoiding illegal immigration such as the significant increase in the amount of the fines for immigration sanctions. Employers of foreign nationals unauthorized for such employment are increasingly subjected to administrative and criminal penalties. Concerns about the impact of foreign workers on the Spanish labor market given the very high current unemployment rate in Spain and the lack of personnel to handle the procedures are frequently the reasons to justify longer processing times and an increase in refusals of petitions. Employers should evaluate alternatives prior to hiring foreigners as they should not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, etc., must also bear in mind the status of foreign employees and the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as enforcement activity increases.

Although the Spanish Law for Foreigners has been modified early this year, an amendment to its rules of implementation is still expected. The rules of implementation for the “old” Law for Foreigners are still valid in the aspects that do not contradict the “new” Law for Foreigners. The new rules of implementation may enter into force at the end of the year but at the time this issue of our Global Mobility Handbook is edited no project of the rules of implementation is in circulation or available to the public so as to be able to anticipate the changes that may be introduced in the Spanish immigration front. However, a reform of work permit renewals, access to the labor market of family dependants and facilitating administrative procedures may be an objective of the new rules of implementation.

Business Travel

Foreign nationals coming to Spain on short-term business trips may use short term or multiple short term stay visas. In both cases, the purpose of the foreigner’s stay in Spain must be either business or tourism but under no circumstance should it be work.

Unfortunately, regulations do not clearly establish what activities are included in the term “business” as opposed to “work” although the line between one and another may be determined based on the duration of the foreigner’s stay in the country. A business visitor may very well carry out a commercial and professional activity in Spain such as business meetings, conferences, negotiations and general administration activities. Employment in Spain or work related activity is prohibited.

- Short term stay visas. Valid for a maximum three month stay within a six-month period in Spain. It may be issued for single, double or multiple entries.
- Multiple, short term stay visas. They authorize the foreigner to multiple stays in Spain but such stays may not exceed 90

days (continuous or cumulative) within a six month period. The visa is normally valid for a year but may exceptionally be issued to be valid for several years.

Visas may be extended in Spain but only if the visa authorizes a stay that does not exceed 90 days, for instance, when the visa granted to the individual is valid for one month only, the foreigner may try to obtain an extension prior to the visa's expiry but may only be granted an additional 60 days.

Unless the foreigner qualifies as a student, for stays over 90 days within a six-month period, the foreigner must obtain a residence visa.

To extend the visa, the foreigner must prove sufficient funds to cover expenses during the stay; medical insurance; accommodation; proof of intent to depart Spain (e.g., a departure ticket) and, finally, proof of the business purpose of the stay in Spain.

Visa Waiver

The normal requirement of first applying to a Spanish consular post for the short term stay visa is waived for foreign nationals of certain countries. The permitted scope of activity is the same as short term stay or multiple short term stay visas. The length of stay is up to 90 days within a six-month period only, without the possibility of a stay extension or status change. A departure ticket is required together with proof of financial means during stay in Spain, medical insurance and accommodation.

All EU and EEE countries together with the following non-EU/EEE countries are presently qualified under this program: Andorra, Argentina, Australia, Brazil, Brunei, Da Russa Lam, Canada, Chile, Costa Rica, Croacia, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, Nicaragua, New Zealand, Panama, San Marino, Singapore, South Korea; Switzerland, United States of

America; Uruguay Venezuela; special administrative region of Hong Kong (People's Republic of China) and special administrative region of Macao (People's Republic of China).

Training

If the purpose of the foreign national's stay in Spain is studying, or carrying out scientific or medical investigation or training related activities that are not professionally remunerated, it is appropriate to obtain a student visa at the Spanish Consulate in the country of origin or country of legal residence abroad.

The student visa applicant must provide proof of enrollment in official studies or investigation centers, private or public, with an approved attendance schedule and studies/training or investigation plan. The foreigner qualifying as a student must show sufficient funds to for support during studies or investigation (scholarships or personal funds). Once the student is in Spain, an application for a student card must be submitted. The card is will be valid for the duration of the studies/training program, up to a maximum one year. The student card may be extended if the studies/training or investigation continue. The student's spouse and minor children may also obtain a student visa and a student card.

Holders of student cards may work in Spain under certain conditions:

- Medicine and Surgery students; Psychology students; Pharmacy; Chemistry or Biology students holding a degree officially authorized by the Ministry of Culture and Education in Spain and that are enrolled to study specialization studies in Spain may carry out remunerated work as required by such specialization studies. Such activity must be notified to labor authorities in Spain; and

- Holders of student cards may obtain a work authorization conditioned to the validity of the student card to work on a part-time basis or full-time but in this latter case, the work authorization will be valid for a maximum three months, as long as the student card is valid for such time period.

Holders of student cards for, at least, three years may convert the student card into a work and residence authorization if the following conditions are met:

- The student must have finished his/her studies/investigation activities satisfactorily.
- The student mustn't have been granted a scholarship inherent to cooperation or country development programs (private or public).
- The conversion petition must be filed within the three months prior to the student card expiry date.

Family members of students who meet the above requirements to convert their student cards into a work and residence permit may also convert their student cards into non-lucrative residence permits.

Employment Assignments

The options regarding the type of work permit to be obtained are the following:

Transnational Work and Residence Permits (formerly type "G" permits)

Applicable to inter-company transfers, when a multinational decides to assign an employee temporarily from one of its work centers located outside of the European Union (EU) to Spain (excluding

transfers for training purposes); or for temporary assignments from a company located out of the EU to a company in Spain pursuant to service agreements entered into by both companies.

This type of permit has maximum one year duration and may be extended for an additional year. However, in practice if Social Security treaties between Spain and other countries enable maintenance of social security contributions for longer than two years, the transnational work permit may be extended in accordance to such social security treaty.

Certain conditions must be met as follows:

- The employee's length of services in the company must be of at least 9 months, and of at least 1 year within the same field of activity;
- During the employee's temporary transfer, his/her employment relationship (payroll and social security payments) must be maintained in the transferring entity; and
- The employee who is being transferred should hold legal and stable residence in the country from which the employee is transferred for the duration of the Spanish assignment.

Transnational work and residence authorizations are the only authorizations that allow maintenance of employment abroad, that is, the foreigner should not be hired locally in Spain and does not have to contribute to Spanish social security locally unless there is no Treaty between Spain and the country assigning the employee to Spain. In this later case, social security contributions must be made locally either by the Spanish subsidiary or by the company abroad that will have to register as an employer in Spain for social security purposes.

Fixed Term Duration Work and Residence Permits

These permits authorize the performance of activities which by their nature are limited in time. Certain situations may fit into such type of permits:

- Seasonal activities, with a maximum duration of nine months within a period of twelve months;
- Installation of industrial or electric plants, maintenance of productive equipments, start up procedures, etc.;
- Fixed term activities performed by the top managers, professional athletes, performance artists, etc.; and
- Occupational training and professional practice.

With the exception of the permit for seasonal activities, which is limited to nine months as mentioned above, the general maximum initial duration of this permit is one year, although it may be extended for as long as the employee's fixed term employment contract is also extended.

Fixed term duration work and residence permits imply hiring the foreign employee locally by a company duly registered for employment and tax purposes in Spain.

Temporary Work and Residence Permit (formerly type B-initial permit)

Such permit has an initial one year duration and may be extended annually until the employee obtains a permanent residence permit in Spain (after five years of legal residence). At present, the alternatives for obtaining this type of permit are quite restrictive because the approval of these work permits is subject to a labor market test unless the employee or position offered meet certain conditions as follows:

- **Personal conditions:** The individual must be an ascendant or descendant of a Spanish national or the spouse of a foreigner that holds a renewed residence permit in Spain or a national of Peru or Chile, or meet other specific personal requirements; and
- **Special conditions related to the position in the Spanish company:** The employee must be, for instance, a top management employee with ample power of attorney granted in the employee's favor to represent the Spanish company, or the employee must be a highly qualified employee whose position is directly related to the Spanish company's management or administration, or the employee must be a highly skilled specialist necessary to install or repair imported productive equipment, etc.

If none of these conditions are met, the approval of the work permit will depend on the unemployment rate in Spain, in which case the approval would only be issued if: the position offered in Spain is included in the "Difficult Coverage Job Position Catalog" ("C  atlogo de Ocupaciones de Dif  cil Cobertura"); or the Spanish company obtains a labor market test certificate issued by the Employment Office indicating that there are no unemployed people registered that meet the conditions required for the position.

Processing Stages

Stage 1. Submitting work and residence authorization at the Government Delegation/Sub-delegation/ Autonomous Community Authority or Large Companies' Unit of the State Secretariat of Immigration of the Labor Ministry.

Stage 2. Approving work and residence authorization. The immigration authorities may take from 1 - 3 months to adjudicate the work and residence authorization application. A notification of

approval will be issued and, normally, sent by mail to the Spanish company sponsoring the work permit application. Such notification must be given to the employee.

Stage 3. Applying for work/residence visa. The employee will have thirty days as from the notification of approval is received to apply for and obtain the work and residence visa at the Spanish Consulate in the country of origin or country of legal residence with jurisdiction over the employee's residence.

Stage 4. Issuing visa. Once the application for the visa has been filed, the Consulate may take from 48 hours to 30 days to approve and issue it. Once the visa approval has been notified to the employee, he or she will have 30 days to retrieve it at the Spanish Consulate's premises. Regulations establish that the retrieval should be made personally by the foreign employee. The ordinary work/residence visa is valid for 90 days and authorizes one entry into Spain/Schengen territory. The employee must enter Spain within the visa's validity.

Stage 5. Working in Spain and obtaining Foreigner's ID Card. Once the foreign employee enters Spain with the visa, employment is authorized. The foreign employee will have 30 days as from entry to attend the relevant immigration office (e.g., police station for foreigners) with jurisdiction over his/her residence in Spain to apply for the foreigner's ID card that is the final document that will serve for purposes of identification in Spain together with the individual's passport.

Family Members

Family members (spouse, children under 18 years of age or dependant ascendants when there are justified reasons to approve their residence in Spain) may obtain a residence permit that, in principle, does not authorize to work in Spain following the below procedures:

- Via the Large Companies' Unit of the State Secretariat of Immigration of the Labor Ministry ("Unidad de Grandes Empresas"). This unit processes work and residence authorizations for companies that have either: (i) more than 1000 employees in Spain; (ii) a volume on investments in Spain over 200 million euros; or, finally (iii) if the company has declared a gross investment (funds from abroad) of, at least 20 Million Euros. This said, if the foreign employee holds a top management position, the residence permits of the family members must be applied for and processed together with the work and residence authorization of such foreign employee. Therefore, when the employee's work authorization is approved, the family members' non-lucrative residence authorizations are also approved.
- Via family reunion. The foreign employee who has applied for the renewal of the residence permit may apply for the family's residence authorizations at the Government Delegation/Sub-delegation with jurisdiction over the residence in Spain. If the residence authorizations are approved, family members will have 30 days to submit their residence visa applications at the Spanish Consulate located in their country of origin or country of legal residence. Once the visas have been issued on the applicants' passports they may travel to Spain and apply for their foreigner's ID cards.
- Via ordinary non-lucrative residence authorizations. Family members of top management employees may submit their visa applications at the same time the employee does (please see Stage 3 of the procedure to obtain a work and residence authorization in Spain). However, their residence visas will be approved 3-4 months after filing the applications. The reason for the delay is that their applications are forwarded to Spain so that the Government Delegation/Sub-delegation/Autonomous Community Authority approves the

applications. The process of transmitting the documentation from the Spanish Consulate to the relevant authority in Spain is extremely delayed and currently takes about two months. In the future, applications will be transmitted electronically and, hopefully, delays will decrease significantly.

Of all three cases, only if the family members obtain their residence permits via family reunion would they be able to work in Spain directly without having to previously obtain a work permit. With respect to the other two procedures to obtain a family residence permit, they do not authorize to work but family members (in the case of children, they must be of legal age, sixteen, to do so) may obtain work and residence authorizations if they are offered a position by a company established in Spain. The new rules of implementation may change this aspect of Spanish regulations and establish that the residence permit of family dependants authorizes to work in Spain regardless the procedure followed to obtain it.

Other Comments

There are additional authorizations that may apply to the specific cases such as work permit exception and residence authorizations that apply to Directors or professors of foreign or local Universities. Also, Spanish immigration regulations establish a way to obtain a work and residence authorization based on the years a foreigner has remained in Spain and on his/her insertion in Spanish society. In effect, work and residence authorizations based on exceptional circumstances, “arraigo social,” may be obtained if a foreigner has remained in Spain for more than three years and has been offered employment for more than a year.

Immigrants to Spain are often interested to later become Spanish citizens. Naturalization to citizenship generally requires ten years of continuous residence after immigrating, however, this general period is shorter for nationals of countries such as: Morocco or Philippines

(to five years); nationals of all South and Central American countries (to two years); and for the spouse of a Spanish national or the son or grandchild of a Spanish national (to one year). The processing of a Spanish citizenship petition via previous years of residence in the country may take up to three years.

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Republic of Korea

Executive Summary

In general, whether or not a foreign national is required to obtain a visa to visit Korea depends on a variety of factors including nationality, the purpose and expected duration of stay, occupation and family relations.

Many nationalities are permitted to visit Korea without a visa. However, certain foreign nationals and usually everyone who wants to stay longer than 90 days (depending on your nationality) plus those planning to work must apply for a visa.

In general, applications for visas need to take place outside of Korea at a Korean consulate or at the consular section of the Korean embassy in the foreign national's country of residence.

The specific meaning of the term "visa" differs from country to country, although it is often used to mean either the 'permission to enter' a given country or the 'consul's recommendation for a foreigner national's entry request.' The latter definition is used in Korea, which means that even if a foreign national has received a Korean visa, such person can still be denied entry into Korea if an immigration officer finds any requirements unsatisfactory after inspection.

Key Government Agencies

Immigration policy is overseen by the Ministry of Justice through the Korea Immigration Service. The Korea Immigration Service has jurisdiction over immigration and residence matters in Korea and primary functions include supervision of visa affairs at Korean consulates abroad, entry and exit clearance service, management of foreign nationals' residence status and registration, determination of refugee status and investigation of unlawful foreign nationals.

The Korea Immigration Service consists of ten teams, including Immigration Administration Team, Policy Development & Evaluation Team, Border Control Team, Residence Policy Team and Investigation & Enforcement Team under the Director General for Immigration Policy, Nationality & Refugee Team, Social Integration Team, Overseas Koreans Team, International Cooperation Team and IT Planning & Statistics Team under the Director General for Nationality & Integration Policy.

Related ministries include Ministry of Employment and Labor, Ministry of Health and Welfare, and Ministry of Foreign Affairs and Trade. The Nationality Act, Act on the Employment, etc. of Foreign Workers, Immigration Control Act, Multicultural Families Support Act, and Framework Act on Treatment of Foreigners are the foundation of immigration policy in Korea.

Current Trends

After the 1988 Seoul Olympics, Korea opened its borders to general public and resulted in increased exchanges with foreign countries. The UN declared Korea as an official receiving country in 2007 and the number of foreign residents in Korea grew from 0.39 million in 1997 to over 1 million as of the end of 2007. The majority of foreign residents in Korea are temporarily visiting migrants or students and accounts for only 2.2 per cent of the country's total population.

As Koreans shun the so-called “3D” workplaces — those that are difficult, dirty and dangerous — small- and medium-sized enterprises (SMEs) in Korea need low-cost labor. Despite the increasing demand for and supply of migrant workers, the only system for supplying low-skilled migrant workers is the industrial training system. It was introduced in 1993 to enable SMEs to employ a total of 80,000 foreigners in the form of industrial trainees. The industrial training system has been criticized by the international community, since it is

designed to channel migrant workers into labor-intensive jobs rather than train them.

As described in the new national plan for Immigration Policy, the Korean government claims that the policy line on foreigners needs to be changed into a strategic opening to tap into the talent and capital of the rest of the world and states that access to Korea will be improved for professionals, foreign investors, international students, and other highly-skilled people. Furthermore, Korean diaspora will receive preferred treatment over other foreigners when all the other conditions are the same and Korean diaspora will get more convenient entry/exit clearance services and employment permits.

Business Travel

Business Visitor Visa

Unless by terms of a treaty between Korea and the foreign national's country of nationality, the business visitor is required to obtain a short term business visitor visa (C-2) prior to entry.

Nationals of those countries listed below with which Korea has signed a visa waiver agreement can enter without visas. However, such nationals can enter without visas on the condition that they will not engage in remunerative activities during their stay in Korea.

Countries under Visa Exemption Agreements (as of October 2009)

	Countries	
90 days (60 countries)	Asia (4 countries)	Thailand, Singapore, New Zealand, Malaysia
	America (24 countries)	Barbados, Bahamas, Costa Rica, Colombia, Panama, Dominican Republic, Commonwealth of Dominica, Grenada, Jamaica, Peru, Haiti, Saint Lucia, Saint Kitts and Nevis, Brazil, Saint Vincent and the Grenadines, Trinidad and Tobago, Suriname, Antigua and Barbuda, Nicaragua, El Salvadore, Mexico, Chile, Guatemala, Venezuela
	Europe (29 countries)	Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom.

	Africa & Middle East (3 countries)	Morocco, Liberia, Israel
60 days (2 countries)		Portugal, Lesotho
30 days (1 country)		Tunisia

Other Visa Exemption Countries

		Countries
6 months (1 country)	America (1 country)	Canada
90 days (6 countries)	Asia (3 countries)	Hong Kong, Japan, Macao
	America (1 country)	United States of America
	Europe (1 country)	Slovenia
	Others (1 country)	Australia

30 days (43 countries)	Asia (2 countries)	Brunei, Taiwan
	America (6 countries)	Argentina, Honduras, Uruguay, Paraguay, Guyana, Ecuador
	Europe (10 countries)	Monaco, Curia, Croatia, Albania, Cyprus, San Marino, Andorra, Bosnia Herzegovina, Serbia, Montenegro
	Others (25 countries)	Guam, Nauru, New Caledonia, Micronesia, Solomon Islands, Kiribati, Fiji, Marshall Islands, Palau, Samoa, Tuvalu, Tonga, Republic of South Africa, Lebanon, Mauritius, Bahrain, Saudi Arabia, Seychelles, Swaziland, United Arab Emirates, Yemen, Oman, Egypt, Qatar, Kuwait

Visa exemption has been suspended for ordinary passport holders from Pakistan and Bangladesh.

Individuals may enter Korea as a business visitor for a limited, defined duration provided that their purpose of visit is to conduct allowable business visitor activities. The visa is to be obtained from a Korean consulate with jurisdiction over the applicant's legal place of

residence. The requirements to obtain a business visitor visa include having a residence and an employer outside of Korea, not receiving remuneration (except incidental expenses such as accommodation travel and meals may be paid by the host), having specific, realistic and pre-determined plans for the stay in Korea, and the period of the intended stay must be consistent with the intended purpose of the trip. The permitted activities as a business visitor include the following:

- attend business meetings or discussions;
- attend sales calls to potential Korean clients; and
- attend seminars or “fact-finding” meetings.

It is possible to extend a business visa while in Korea. The extension should be obtained from the Korean immigration authorities prior to the expiration of the initial visa. An extension is very discretionary and valid business reasons must be shown in order to extend a stay.

Work Visas

All foreign nationals who enter Korea must obtain an appropriate visa from the Korean embassy or consulate in their home country prior to entering Korea. A foreigner entering Korea for the purpose of employment must possess a valid employment visa. An employment visa is given only for jobs that require high-level skills and expertise.

In Korea, there are no legislative restrictions on the type of skills that may be brought in nor on the numbers of staff. However, under government policy, employment visas to foreigners are issued only for those jobs which require high skills and expertise, or for positions which could otherwise not be filled by Koreans. In practice, immigration officials sometimes — although increasingly less these days — declare that a given company has “too many” foreign employees for its stated business purpose.

Laws applicable to foreign employees are the same laws which apply to local employees. Principally, this would be the Labor Standards Act and related statutes. Expatriate employees are required to register with the immigration authorities within 90 days of entry into Korea on any long-term visa. No government approval or registration is necessary with reference to the pay and benefits of expatriate employees. Several types of visas are of most common interest to foreign businesses with commercial presence or interests in Korea as briefly described below.

General Work Visas

For business-related visits, both long-term and short-term work visas are available. In general, there are three long-term work visas: D-8, D-7 and E-7. Depending on the nature of the assignment/employment, type of entity located in Korea, etc., an appropriate visa type may be determined for each foreigner. Even if the duration of the stay in Korea is for a short-term or if the nature of the visit is for business purposes, a short-term business visitor visa (C-2) should be considered.

D-8 Visa

In general, D-8 long-term visa applies to expatriates of a Korean subsidiary or joint venture who are being assigned from the foreign affiliate. In applying for a D-8 visa, for most nationalities (with exceptions), upon entering Korea with either no visa, tourist visa or a short-term work visa, a request for a visa status change from the entry visa to long-term work visa can be made.

D-7 Visa

In general, D-7 long-term visa applies to expatriates of a branch or liaison office of foreign national enterprises in Korea who have been

assigned from and worked with the head office, branch or other affiliates for at least one year prior to the Korea assignment.

D-7 via processing requires a pre-approval certificate. Upon receipt of the pre-approval certificate from the Immigration Office, expatriates may visit the Korean consulate for visa stamping.

E-7 Visa

This visa type applies to foreigner directly hired by a Korean company including a branch or a foreign invested company. Thus, in general, a foreigner applying for E-7 visa is not an assignee seconded from the foreign affiliates as with expatriates under D-8 and D-7 visas. This, too, requires pre-approval certificate and visa stamping outside Korea by visiting a Korean consulate.

Special Work Visas

There are a few commonly applied special work visas in relation to the highly specialized areas of expertise. They include E-4, D-5 and D-9 visas.

E-4 Visa

Technological Supervision visa is granted to a foreigner who enters Korea with a view to providing expertise in the industrial technologies with an invitation from a Korean company. An inviting company should file the application and supporting documents to the Korean authorities. If accepted, the Korean authorities will issue a pre-approval certificate. The remaining procedure is the same as for D-7 and E-7 visas.

D-5 Visa

This visa applies to a special correspondent from a foreign media or broadcasting companies on a mission to Korea. In addition to submitting application to the Korean Immigration Office, a separate report needs to be made with the Ministry of Justice. Then, together with Ministry of Culture and Tourism, the Ministry of Justice will review the documents for approval. Upon approval, a pre-approved certificate is issued. The remaining procedure is the same for D-7 and E-7 visas.

D-9 Visa

This visa is known as treaty trade visa and generally applies to foreign technicians dispatched to Korea for supervision of shipbuilding and manufacture of industrial equipment. The technicians are generally dispatched from the foreign entity importing the ships or industrial equipment.

Family Associated Visas

In addition to applying for an appropriate work visas for foreigners who will be performing service in Korea, it is essential to have the visa processing done for their family members simultaneously if they will join them throughout their assignment in Korea. Family related visas include F-1, F-2 and F-3.

F-1 Visa

This is a long-term visiting visa provided for the visiting relatives, living with family (with special background), invited foreign household servants, etc. F-1 visa is often requested by diplomatic personnel and D-8 visa holders (as there are restrictions) for inviting the household maids from foreign countries for taking care of their household affairs.

F-2 Visa

This resident visa is permitted to selective applicants. They include the foreign spouse of Korean national or foreigner with permanent resident status holding F-5 visa.

F-3 Visa

This is the most common dependent visa allowed for family members of foreigners working in Korea. Generally, the period of this dependent visa runs the same as that of the work visa of the foreigner.

Special Resident Visas

There are two special resident visas which allow foreigners to live and work in Korea without a separate work permit. They are F-4 and F-5 visas.

F-4 Visa

This visa is given exclusively to a foreigner with Korean national background. With this resident visa, no employer sponsorship is required and working in Korea without obtaining other work visas is possible.

F-5 Visa

This is a long-term resident visa given to the foreigners meeting the list of qualifications, including making investment into Korea, holding long-term work visa for at least five years, etc.

Training

D-3 Industrial Training Visa

The D-3 industrial training visa is generally used to allow foreign nationals to come to Korea to acquire skills or knowledge by training at public organizations or private companies. However, a law was enacted in Korea which, as of January 1, 2007, allowed D-3 visa holders to change the status of their visa to an E-9 non-professional work visa, permitting immigrant workers to remain and work in Korea.

The applicant must be a trainee from one of the following types of firms: (i) an enterprise with outward foreign direct investment under the foreign Exchange Law; (ii) an enterprise which exports technology abroad with the Minister of Justice's confirmation for the industrial training; or (iii) an enterprise which exports industrial equipment abroad under the Overseas Trade Law.

A Certificate of Confirmation of Visa Issuance must be obtained from the Immigration Office in Korea before the application for a D-3 visa is submitted to the Korean Embassy or Consulate abroad. The Certificate of Confirmation of Visa Issuance will not be issued to anyone who has violated the Immigration Act or if the inviting enterprise has violated the Immigration Act by illegally employing a foreigner in the past.

D-4 General Training Visa

The D-4 general training visa is for those that study Korean at university language institutes, those that are educated at the educational facilities other than academic research organization or educational organization under a D-2 visa and those that learn technology or skills at a national or public research organization.

A Certificate of Confirmation of Visa Issuance must be obtained from the Immigration Office in Korea before the application for a D-4 visa is submitted to the Korean Embassy or Consulate abroad. This visa is generally for educational and research purposes and is effective for up to 2 years.

Employment Assignment

D-7 Intracompany Transfer Visa

The D-7 visa is for an intra-company transferee. This visa is initially valid for assignments up to 2 years, although 1 year terms are most commonly approved, which can be extended in 1 year increments. The qualified foreign national must have been employed by the foreign parent company of the branch office in Korea or by an affiliate of the parent company for more than 1 year immediately preceding the D-7 visa request, and is being dispatched as a specialist at the Korean branch office.

The D-7 intra-transfer visa application should be obtained at the Korean embassy or consulate with jurisdiction over the applicant's place of legal residence. The work permit application is initially filed by the sponsoring employer in Korea with the Ministry of Justice and Entry Inspection Division of the Immigration office in Korea. The Ministry of Justice then confers with the representing agency and determines whether the visa should be authorized. Upon approval, the Ministry of Justice issues a Certificate of Confirmation of Visa Issuance that should be submitted by the applicant to a Korean embassy or consulate abroad.

The spouse and/or children of a dependent should also apply for their visas, permits, and alien registration at the same time. All members of the applicant's family over the age of 16 are subject to finger printing at the time of application. If the accompanying spouse plans to work while abroad, he/she must also apply for employment authorization.

D-8 Corporate Investment Visa

A D-8 visa is applicable to an employee who has been dispatched to a Korean subsidiary as a specialist participating in administration, management or technological development of a foreign investment company in Korea as outlined by the Foreign Investment Promotion Act. This visa is initially valid for assignments up to 5 years, although 1 year terms are most commonly approved, and can be extended in 1 or 2 year increments. In practice, this category of work visa is usually only available to a foreign national who is dispatched from the foreign parent company to a Korean subsidiary which qualifies as a foreign investment company as an executive or manager. A company which has been established in Korea with foreign investment in the amount of KRW 50 million or more with the proper foreign investment reporting at the time of establishment qualifies as a foreign investment company.

The D-8 corporate investment visa application can be obtained at the Korean embassy or consulate with jurisdiction over the applicant's place of legal residence and the procedures are the same as for a D-7 visa.

As an alternative, a D-8 visa can also be applied for after the applicant arrives in Korea pursuant to a different visa by changing the status of sojourn within 1 week upon arrival in Korea. This option is only available for a D-8 visa which does not require prior obtainment of a Certificate of Confirmation of Visa Issuance and does not require the application to be submitted to a Korean embassy or consulate abroad. For such process in Korea, the visa application and foreign resident registration will be made simultaneously and the visa applicant should go to the Seoul Immigration Office in person to receive the D-8 visa.

Other Comments

Scope of Activities and Employment for Foreigners Nationals Staying in Korea

Foreigners are granted rights to any activities granted by their visa, and may stay as long as their given period of stay. They are not, however, allowed to participate in any political activities except when specifically allowed by law. Foreigners seeking employment during their stay in Korea must have a visa that allows it, and may only work in workplaces designated by local or district Immigration Office. If they wish to change their workplace, permission must be received from the local Immigration Office prior to the change.

It is unlawful to hire, recommend, or arrange for hiring of foreign nationals who do not have appropriate visa status, and doing so is punishable offence under the Immigration Act. Therefore, one must check for the following before hiring any foreign national in Korea: (i) valid foreigner registration card; and (ii) appropriate visa status (since employment may be restricted depending on visa status).

Foreigner Registration

Foreign nationals intending to stay in Korea for more than 90 days after entry are required to submit an application to register as a foreigner with the Immigration Office within 90 days from the arrival date. Upon acceptance of such application, the foreigner will be issued an Alien Registration ID Card and registration as a foreigner will be affixed in their respective passports.

The following are exempt from registering as foreigners: (i) those carrying out diplomacy (A-1), official business (A-2), or conventions/agreements (A-3) and their family members; (ii) those undertaking diplomatic, industrial, or other important duties for the national security and their family members; (iii) those found to be unnecessary to register as foreigners by the Minister of Justice; and

(iv) Canadians intending to stay for less than 6 months who have a cultural arts (D-1), religious affairs (D-6), family visitation (F-1), dependent family (F-3) or miscellaneous (G-1) visa.

Change Status of Stay

Foreigners must receive permission to change the status of their stay if they want to participate in new activities which is not relevant or permitted for their current status. As a general rule, foreigners seeking to participate in activities not permitted under their current status must first depart from Korea, obtain a new status that corresponds with the desired status, then re-enter Korea with the newly obtained status. However, if it is possible to meet the requirements for the new status without having to depart from Korea, limited change of status can be made upon passing an examination.

In order to engage in activities not permitted by the current status of stay, a permission to change the status must be obtained from the local Immigration Office prior to engaging in the said new activities. Some examples of when one would need to apply for change of status of stay include, among others, the following: (i) a short term (C-2) status foreigner wants to invest (D-8) in Korea; (ii) a D-3 status foreigner wants to get a job (D-7) after 1 year training; (iii) a D-4 status foreigner wants to study in Korea (D-2); and (iv) foreigners who married Korean wants to change residence status of stay (F-2).

Re-entry Permit

All long-term (more than 90 days) visas are for a single visit. Therefore, all registered foreigners and foreigners who were exempted from foreigner registration who intend to depart and re-enter Korea within the permitted period of stay should obtain a re-entry permit from the Immigration Office. A single reentry permit, which can be applied for at the airport immigration office on the departure date, is good for a single entry and is valid for up to one year and a multiple

re-entry permit is good for multiple entries and is valid for up to two years.

Online Information

The Korea Immigration Service runs the website <www.g4f.go.kr> where foreign nationals can obtain relevant information and file e-applications. The website has information about living in Korea and administrative processes regarding entry, exit, sojourn, investment and employment. Non-Korean residents can electronically make an appointment with the Korea Immigration Service and apply for extension of stay and re-entry permission. They can also report changes in their employment status through the website's e-application channel. The Immigration Contact Center provides counseling services in 18 languages.

Sweden

Executive Summary

Foreign nationals must acquire the proper authorization in order to enter and/or remain in Sweden. These authorizations differ depending on the foreign national's country of origin and activity that will be performed while in Sweden. Recently, the Swedish government has created simpler rules in order to use the knowledge and experience that immigrants bring to the Swedish labour market.

Key Government Agencies

The Swedish State Department is responsible for receiving visa applications at Swedish embassies or consulates abroad. The visa applications are either processed by the Swedish embassy or consulate abroad or, in certain cases, by the Swedish Migration Board. The Swedish Migration Board is responsible for the processing of applications for work and residence permits in Sweden. Applications for work permits normally require that a certain form, an offer of employment, has been filled in by the Swedish employer before an application is handed in. In the offer of employment, the relevant union(s) shall state their opinion regarding the proposed salary, insurance cover and other terms of employment that will be offered.

A decision rendered by the Swedish Migration Board may, in certain cases, be appealed to the Migration Court. A decision rendered by the Migration Court may under certain circumstances, be appealed to the Migration Court of Appeal.

Inspection and admission of travelers is conducted by the Customs and Border Police at Swedish ports of entry and pre-flight inspection posts. Investigations and enforcement actions involving employers and foreign nationals are handled by the Swedish Police.

The Swedish regulation concerning immigration and foreign nationals in Sweden is principally found in the Aliens Act (2005:716) and the Aliens Ordinance (2006:97).

Current Trends

The immigration policies in Sweden are influenced by EC-regulations. Currently, the first and foremost issue on EU level is the determination of which nationals require work permits to enter into the Schengen area.

One of the main objectives of the Swedish government is to achieve harmonized immigration rules with the rest of the EC area. Furthermore, the Swedish government considers that immigration contributes to vitalizing the Swedish labor market and the economy through the knowledge and the experiences the immigrants bring with them. Hence, the Swedish government has implemented new rules to simplify the influx of foreign labor, (*i.e.*, citizens of Non EU/EEA member states) into the Swedish labor market.

The new rules entail, *inter alia*, that it is the employer's assessment of its need to employ a foreign person that normally shall be the basis for the processing of an application for a work permit. Furthermore, the validity of a work permit as well as the possibilities of obtaining a work permit has been extended. The new rules became effective as of December 15, 2008.

Business Travel

Visa

A visa is a permit which is required to enter and/or remain in Sweden and the other Schengen countries for a limited period of time. A visa granted by any of the Schengen countries is valid throughout the Schengen area. However, in exceptional cases the visa may be limited

for entry merely to the issuing country or certain countries and this applies primarily if the holder's passport is not approved by all Schengen countries.

A visa is usually granted for a stay in the Schengen states for a maximum period of three months during a six months' period. This entails that a person who has stayed in any of the Schengen states during 3 months cannot be granted a new visa until the six months' period has elapsed. Nor is it possible to extend a visa permit. However, provided that special circumstances are at hand, a visa may be granted for up to one year.

Special circumstances may, *inter alia*, be at hand if a person needs to travel to Sweden several times during a year for business purposes or needs to visit children in Sweden. If special circumstances are at hand, it is possible to extend a visa. Such reasons are force majeure, humanitarian grounds or personal reasons, such as medical treatment and business visits. A visa may be granted for a number of reasons, *e.g.*, visiting friends and/or relatives, business or conference visits and visits for medical treatment.

The requirements for a visa may vary from time to time and between the different Schengen states. Up-to date information regarding the requirements may be found at the website of the Swedish embassies and consulates: www.swedenabroad.com.

The principle prerequisite is that the person applying for a visa has the intention to leave Sweden after the visit and that the purpose of the visit is the one specified in the application. Moreover, the person must have a passport that is valid for at least three months after the expiry of the visa. Another condition is that the person applying for a visa must have the monetary means to support him or herself during the stay and the journey back to the home country. The Swedish authorities have established that a person should have approximately €40 (2010) for each day during the stay. A person must also present

proof that they have a medical travel insurance which covers any cost that may arise in conjunction with emergency medical assistance, emergency hospital care and transport to the home country due to medical circumstances. The insurance should cover costs of at least EUR 3,000 (2010) and be valid in all of the Schengen countries.

In case a person applies for a visa for business or conference purposes, the applicant shall submit an invitation letter from the company or the person arranging the stay in Sweden. The invitation letter should, *inter alia*, contain the following information: the invitee's personal details; the reason for the visit to Sweden; the duration of the stay in Sweden, and the person responsible for the invitee's support during the duration of the stay in Sweden.

Visa Waiver

Most non EU/EEA citizens are required to hold a visa before entering into Sweden. However, citizens of the following countries are currently exempted from the visa requirement: Andorra; Argentina; Australia; Brazil; Brunei Darussalam; Bulgaria; Canada; Chile; Costa Rica; Croatia; El Salvador; Guatemala; Holy See (State of the Vatican); Honduras; Israel; Japan; Malaysia; Mexico; Monaco; New Zealand; Nicaragua; Panama; Paraguay; Romania; San Marino; Singapore; South Korea; United States of America, Uruguay and Venezuela.

Employment Assignments

EU/EEA Nationals

An EU/EEA national who is, *inter alia*, an employee; a self-employed person; a provider or recipient of services; a student, or a person who has sufficient funds to support him or herself is entitled to reside in Sweden. This entails that such persons and their family members have a right to stay, live and work in Sweden for more than three

months without a residence or work permit. However, should the stay in Sweden exceed three months, the EU/EEA national shall normally register with the Swedish Migration Board no later than three months after entering into Sweden. Citizens of Switzerland and their family members are not required to apply for a work permit but must apply for a residence permit. Nordic citizens do not need to register or hold a residence permit.

To register with the Swedish Migration Board, the EU/EEA national must file a special application form and enclose certified copies of a valid passport or a valid national identity card where the holder's nationality is stated. Furthermore, certain documents indicating that the person has a right to reside in Sweden shall be enclosed to the application. The documents required are dependent upon which ground the person is claiming as a right to reside under. The following applies for employees and self-employed persons.

Employees

EU/EEA nationals employed in Sweden must, *inter alia*, present a certificate of employment stating the period of employment and the form of employment. The certificate must be written and signed by the employer. It is recommended that a special form provided by the Swedish Migration Board is used for this purpose.

Self-employed Persons

As to self-employed persons, the following documents shall be affixed to the application: a registration certificate for the company and/or a notice of tax assessment for self-employed persons, so called F-tax certificate (Sw. *F-skattsedel*). Usually, further documentations are required and such documents may, *inter alia*, be: marketing plan for the company; lease agreement for the premises necessary; proof of previous experience and/or expertise within company's field of

business; invoice from the company; receipts and/or invoices for materials purchased for the business; and VAT accounts.

Registration Procedure

The application may be sent by mail to the Swedish Migration Board or handed in by the person applying to one of the permit units of the Swedish Migration Board. Furthermore, employees may register directly on the Swedish Migration Board's website: www.migrationsverket.se.

Non-EU/EEA Nationals

Non-EU/EEA nationals and non-Swiss nationals who want to live and work in Sweden need to be granted a work permit. Provided that the duration of their stay in Sweden exceeds three months, a residence permit is also required. Furthermore, some foreign nationals must also hold a visa to enter into Sweden. The requirement to obtain a work and residence permit and a visa applies irrespectively of if the employee is employed by a Swedish company or not. The permits shall normally be entered into the person's passport before they arrive to Sweden.

Exemption from the Work Permit Requirement

There are a number of exemptions from the requirement to hold a work permit. This applies to certain large categories of people, such as EU/EEA citizens. In these cases, the exemptions apply to all types of work. There are also exemptions for certain professional categories that only plan to work for a short period of time in Sweden.

Specialists in an international group who are working temporarily in Sweden for the group (in total less than one year) and employees employed by an international group that will undergo practical training, on-the-job training or other in-service training at a company in Sweden which is part of the group (in total a maximum of three

months during a twelve-month period) are examples of certain professional categories who are exempted from the work permit requirement.

Advertisement of the Employment

Swedish, Swiss and EU/EEA nationals have preference over other nationals to obtain work in Sweden. For new recruitments, an employer shall make it possible for residents of the above mentioned nationals to apply for the vacant employment. The easiest way for an employer to do so is to advertise the employment with the Public Employment Service (Sw. Arbetsförmedlingen). The vacant employment will then also be accessible in EURES (The European Job Mobility Portal).

Requirements for Work Permit

In order to be granted a work permit, the following requirements applies: there must be an offer of employment from an employer in Sweden; the employee must have a valid passport; the employee must earn enough from the employment to support him or herself; the terms of employment have to be equivalent to those provided by a Swedish collective agreement or to customary terms and conditions for the occupation or industry; the relevant union has to be given the opportunity to state an opinion on the terms and conditions of employment and the vacant position must, in case of new recruitment, have been advertised in Sweden and the EU. Family members may be granted a residence permit for the same duration as the term that the residence and work permits is granted.

Application Procedure

As a main rule, a person shall apply for a work permit from the country where he or she resides. Before entering Sweden, the permit shall have been granted and the permit sticker shall have been affixed

to the passport. However, in certain cases, an employee may apply for a work permit in Sweden. This applies, *inter alia*, if a student with a student residence permit has completed at least thirty higher education credits or one semester/term of postgraduate education from inside Sweden; or if a job applicant, visiting an employer, has received an offer of employment and there is a special need to begin the work immediately.

If application is made from outside of Sweden, it can either be done electronically on the Migration Board's website www.migrationsverket.se or at a Swedish mission abroad (embassy or consulate) in the country of residence. An application made from Sweden can be filed electronically on the Migration Board's website, by mail to the Migration Board or at any Migration Board Permit Unit. A copy of the passport, offer of employment and receipt showing that the application fee is paid must be attached to the application.

Validity of a Work Permit

If the employment is temporary, the employee may be granted a residence and work permit valid for the period of employment and for a maximum period of two years at the time. The initial work permit may be extended one or numerous times. However, the period of validity for the work permit may not exceed four years in aggregate. After forty-eight months, the employee will be eligible for a permanent residence permit. The Migration Board may withdraw the work and residence permit if a person loses his or her employment and provided that the person has not found a new employment within three months after the expiration of the previous employment.

In certain cases, a new application for a work permit must be submitted. The first two years, the residence and work permit is restricted to a specific employer and a specific occupation. If a change of employer is made during the first two years, a new work

permit is required. If a residence and work permit is extended after two years, the permits will be restricted only to a specific occupation.

Self-employed Persons

In order to stay in Sweden for more than three months, to start a company or enter into a company partnership, a residence permit is required. A self-employed do however not need a work permit.

To obtain a residence permit for a self-employed person in Sweden, the person is required to present, *inter alia*; proof that the ownership is at least fifty percent of a company; provide a commercial evaluation in order to establish that the business plans are realistic and that the business can be expected to achieve satisfactory profitability; provide documentary evidence of necessary capital to establish or purchase a company; proof of ability to support him or herself and his or her family during the first two years; supply detailed documentation of the business plans as well as a market forecast, a profit and liquidity budget and a balance sheet and provide details of customer references, banking connections, as well as former experience in the business. Moreover, a contract for business premises and a contract with customers or suppliers must be enclosed to the application.

Switzerland

Executive Summary

Switzerland has one of the highest rates of immigration in Europe. With a fifth of the total population consisting of non-citizens, Switzerland is one of the nations with the largest resident foreign populations for its size.

The federal government has been gradually adapting its policy on foreign nationals and migration to more modern standards taking into account international developments. Its policy is embodied in the Foreign Nationals Act, in force since January 2008.

Key Government Agencies

The Federal Office for Migration (“Bundesamt für Migration” / “Office fédéral des migrations” / “Ufficio federale della migrazione”) is responsible for all concerns related to aliens and asylum in Switzerland.

The Cantonal Migration Authorities are responsible for the extension of visas or the granting of aliens police residence permits and residence permits, among others.

Swiss foreign missions abroad issue different immigration visas, including entry permits for restricted nationalities.

Current Trends

The Federal Law on Foreigners took effect on January 1, 2008. This law replaced the Federal Law on the Right of Temporary and Permanent Residence for Foreigners and applies to persons who are not nationals of European Union or European Free Trade Association.

Under the new law, there remain large restrictions on the employment of foreign nationals from non-EU countries for activities other than those pertaining to specialists, management and qualified personnel. Regulations on salaries, working conditions and limits on visas for third state citizens have to be observed. The Federal Council is negotiating the extension of the agreements regarding the free movement of persons to include Bulgaria and Romania with the European Union.

Business Travel

Foreign nationals not carrying out lucrative activities in Switzerland may remain in the country without a residence or work permit for as long as three months. After three months, foreign nationals are required to leave the country for at least one month. Foreign nationals are not authorized to stay in Switzerland more than six months in a period of twelve months.

This entry permit must be acquired at any Swiss foreign mission in the foreign national's country of residence.

Visa Waiver

Depending on the foreign national's citizenship, the normal requirement of an entry visa may be waived. The countries qualifying for such benefits is subject to change. For current information, please visit www.bfm.admin.ch.

Training

Trainees are eligible for a short-term residence permit. The period of validity is limited to one year. In exceptional circumstances, the period of validity may be extended further by six months.

Trainees are persons aged 18-30 who have completed their occupational training, and want to undergo some advanced occupational or linguistic training in the context of gainful employment in Switzerland. Trainees are subject to rules, which have been laid down in special treaties. Thus, they are subject to special quotas. The legal provisions concerning national priority are not applicable to them.

Trainees should receive salaries comparable to those of host country nationals in the same job and with similar qualifications, and should in any case be able to cover their living expenses.

Employers are free to look for candidates in their own subsidiary companies abroad or through business connections. If they prefer, however, they may ask the government officials responsible for the scheme to help them find suitable trainees for any positions available.

Employment Assignments

Switzerland introduced a dual system of recruiting foreign labor in 1998. Under this system, nationals from EU or EFTA member states, regardless of their qualifications, are granted easy access to the Swiss labor market. Nationals from all other states are admitted in limited numbers, provided that they are well qualified.

Priority

Third state nationals may only be admitted if a person can not be recruited from the labor market of Switzerland or another EU/EFTA member state. Swiss citizens, foreign nationals with a long-term residence permit or a residence permit allowing employment, as well as all citizens from those countries with which Switzerland has concluded the Agreement on the Free Movement of Persons (*i.e.*, the EU and EFTA states) are granted priority. Employers must prove that

they have not been able to recruit a suitable employee from this priority category despite intensive efforts.

Vacant positions must be registered with the Regional Employment Offices together with a request to register the vacancy in the European Employment System (“EURES”). Once a potential employee has been put in contact with the employer and subsequently turned down, the employers generally receive a questionnaire in which they can state the reasons the potential employee was not hired.

In addition, the employer must explain to the authorities why the search for a suitable candidate by means of the recruitment channels used in the specific industry (*e.g.*, specialist journals, employment agencies, online job listings or corporate websites) was not successful. Suitable proof includes job advertisements in newspapers, written confirmation from employment agencies, or other kinds of documentation. Often it is helpful for authorities if the employer submits a brief overview of all candidates with a short explanation of which qualifications for a particular job were lacking. In special cases, the authorities can request an employer to intensify his recruitment efforts.

Salary/Terms and Conditions of Employment Customary in the Region and in the Business

The salary, social benefits and the terms of employment for foreign workers must be in accordance with conditions customary to the region and the particular sector. Some sectors and businesses lay down these conditions in a collective labor agreement which is legally binding either on a national or, at least, cantonal level. When applications are submitted from businesses that do not have a collective labor agreement, the Swiss authorities usually request information directly from the employers’ and employees’ associations on the terms customary in a particular sector. By examining the salary rates and terms of employment beforehand, the authorities can ensure

that foreign workers are not exploited and that Swiss workers are protected against social dumping.

When submitting an application, the employer must enclose an employment agreement that has been signed both by the employer and the employee and that contains a note reading “contract only valid on condition that the authorities grant a work permit.” This provides both contracting parties with legal certainty. It is helpful for the Swiss authorities if the employing business enterprise uses a contract of employment that is customary to the particular sector of industry.

Employers are obliged to register all employees with the various social security institutions.

Foreign employees that do not have a long-term residence permit are subject to tax at source and therefore must be registered with the tax authorities. It is then the responsibility of the employer to deduct the amount of tax each month from the employee’s wage and pay the sum to the tax authorities.

The new Federal Act on Illegal Employment (“LTN”) facilitates, on the one hand, the payment of social security contributions for smaller, employed jobs. On the other hand, it contains new measures and more severe penalties to combat illegal employment. One provision that remains unchanged for both employer and foreign employee is that everyone - whether in paid or unpaid employment - requires a permit.

Non-compliance with the salaries and terms of employment customary to a particular region or sector of industry, as well as black labor are investigated first and foremost by the cantonal authorities or, in some sectors, by offices established mainly for this purpose. Employers found not to comply with the legal requirements will not receive any further work permits for foreign workers.

Personal Qualifications

Executives, specialists and other qualified employees will be admitted. “Qualified employee” means, first and foremost, people with a degree from a university or institution of higher education, as well as several years of professional experience. Depending on the profession or field of specialization, other people with special training and several years of professional work experience may also be admitted.

Besides professional qualifications, the applicant is also required to fulfill certain other criteria, which would facilitate his or her long-term professional and social integration. These include professional and social adaptability, knowledge of a language, and age.

The Swiss authorities examine the applicant’s qualifications on the basis of the curriculum vitae, education certificates, and references. Applicants must submit copies of the original documents, including a translation, if the original documents are not in German, French, Italian, English, or Spanish.

If an applicant comes from a nation whose education system or system of professional training greatly differs from that of Switzerland, it is helpful for the immigration authorities if documents are submitted containing additional information on the institution, the length and the content of the education or training course. Documents that may be helpful include the curriculum vitae and education certificates showing what exams were taken and what the results were.

Exceptions to the Admittance Requirements

Exceptions to the admittance requirements may be granted in specific situations. These are listed below. They are not comprehensive but represent the most frequent circumstances.

Cooperation agreements/projects:

- Joint Ventures
- Service and guarantee work for products from the country of origin
- Temporary duties as part of large projects for companies with headquarters in Switzerland (international assignments)
- Execution of a special mandate

Practical training and further education:

- With professional associations
- With international business enterprises
- In specially defined fields with training programs for small and medium-sized companies
- To take up a temporary teaching position at a university or research institute
- To take up a temporary teaching position at a recognized foreign educational establishment

Transfer of executives or specialists

- within multinationals
- under reciprocity agreements

Difficult recruitment situation in the labor market

- Branches or groups of persons of economic significance who are urgently needed and who are determined by the Federal

Office for Migration in consultation with the competent cantonal authorities and the trade associations involved.

Employment following conclusion of a person's studies

- Highly qualified scientists with a degree obtained in Switzerland in areas or sectors in which there is a lack of potential labor.

Economic and other reasons with lasting effect or influence on the Swiss labor market:

- To open up new markets
- To ensure important economic contacts abroad
- To guarantee export volume
- Formation of an enterprise or expansion of a company that creates long-term jobs for Swiss employees

Family members of Swiss nationals and persons with a long-term residence permit do not require authorization for self-employment. Family members of other foreign nationals staying in Switzerland do require a permit, however.

Accommodation

Foreign nationals may only be admitted for employment if they have suitable accommodation.

EU/EFTA Nationals in Switzerland

EU/EFTA nationals have the right to reside and work in Switzerland.

For the pre-2004 EU member states (EU 15), Malta, Cyprus and EFTA, there are transitional restrictions regarding access to the labour market that have been removed on June 1, 2007.

For the eight Central and Eastern European Members states that joined the EU in 2004, these restrictions will continue to apply until 2011 at the latest.

The Agreement on the Free Movement of Persons is not yet applicable to Bulgaria and Romania. Negotiations on a possible extension are currently under way, but in the meantime, citizens of these two countries are still treated like third country nationals.

Nationals of the EU 15, Malta, Cyprus and EFTA with Employment in Switzerland

A Work and Residence permit is issued if an employment contract or a written confirmation of employment has been submitted, and is valid throughout Switzerland. The permit is not bound to a canton, or to an employer or any particular activity. Permit holders enjoy full geographical and professional mobility. No permission is needed to change jobs; there is only an obligation to register with the communal authorities when moving to a new address. The validity of these permits is determined by the duration of the employment contract.

Employment of Less Than Three Months per Calendar Year

No permit is required. The employer can simply announce the presence of the new employee using the online procedure of the Federal Office for Migration.

Employment Contracts Between 3 Months and 364 Days

A short term permit L EC/EFTA will be issued for the duration of the contract. Upon presentation of a new contract it can be prolonged to a maximum duration of 364 days or renewed.

Employment Contracts of One Year or More (including open ended contracts)

A residence permit B EC/EFTA is issued with an initial validity of five years.

Cross-Border Workers

Workers living in the EU/EFTA and employed in Switzerland can receive a G EU/EFTA frontier worker permit provided that they return home at least once a week. If they stay in Switzerland during the week, they must register with the communal authorities where they are staying.

Settlement Permit (C-EU/EFTA)

The settlement permit is not regulated by the Agreement. It is currently granted to the pre 2004 EU and EFTA nationals after five years of residence in Switzerland, on the basis of settlement agreements or considerations of reciprocity. As currently no such agreements exist for the new EU member states, their citizens receive the C permit after the regular residence period of 10 years. The C permit has to be renewed every five years. It is not subject to restrictions with regard to the labour market, and its holders are practically placed on the same level as Swiss nationals (holders can invoke the freedom of trade and industry), with the exception of the right to vote and elect.

Nationals of Poland, Hungary, Czech Republic, Slovenia, Slovakia, Estonia, Lithuania and Latvia (EU 8) with Employment in Switzerland

Until 2011 at the latest, nationals from these countries are still subject to transitional restrictions regarding access to the labor market. Work permits are subject to:

- Economic needs test - A permit is only granted if no equivalent person is already available on the Swiss labour market;
- Control of wage and working conditions - a permit is only granted if local wage levels and working conditions are respected;
- Quota - a permit is only granted if the respective quota for the L or B permit has not yet been used up. Frontier worker permits and permits with a validity of less than four months are not subject to a quota; and
- Cross-Border workers must live and work within the so called cross-border zone on both sides of the Swiss border. The cantonal authorities provide details on these zones.

Except for the frontier zone rule, these restrictions only apply to first time admissions. Once admitted to the labour market, EU 8 nationals can also benefit from full professional and geographical mobility. Apart from the specific restrictions above, EU 8 nationals have the same rights and obligations as all other EU/EFTA nationals.

Nationals of all EU/EFTA Countries Planning to Start a Business in Switzerland

The rules for independent entrepreneurs are the same for nationals of all EU and EFTA member states. As the Agreement on the Free Movement of Persons is not yet applicable to Bulgaria and Romania, this is not yet the case for citizens of these countries.

EU/EFTA nationals wishing to start a business in Switzerland can apply for a five-year B EU/EFTA permit with the respective cantonal authorities. This permit will be granted if there is proof of an effective independent activity. The cantonal authorities determine what documents must be presented. As a general rule, these include some or all of the following: business plan, proof of capital for starting the business, proof of specific preparations for launching the business like rental agreements for real estate, a registration with the register of commerce.

Nationals of Third States in Switzerland

Permit B: Residence Permit

Resident foreign nationals are foreign nationals who are resident in Switzerland for a longer period of time for a certain purpose with or without gainful employment.

As a rule, the period of validity of residence permits for third-country nationals is limited to one year when the permit is granted for the first time. First-time permits for gainful employment may only be issued within the limits of the ceilings and in compliance with the Federal Act on Foreign Nationals (“Letr”). Once a permit has been granted, it is normally renewed every year unless there are reasons against a renewal, such as criminal offences, dependence on social security or the labor market. A legal entitlement to the renewal of an annual permit only exists in certain cases. In practice, an annual permit is normally renewed as long as its holder is able to draw a daily allowance from the unemployment insurance. In such cases, however, the holder is not actually entitled to a renewal of the permit.

Permit C: Settlement Permit

Settled foreign nationals are foreign nationals who have been granted a settlement permit after five or ten years’ residence in Switzerland.

The right to settle in Switzerland is not subject to any restrictions and must not be tied to any conditions. The Federal Office of Migration fixes the earliest date from which the competent national authorities may grant settlement permits.

As a rule, third-country nationals are in a position to be granted a settlement permit after ten years' regular and uninterrupted residence in Switzerland. U.S. nationals are subject to a special regulation. However, third-country nationals have no legal entitlement to settlement permits. Apart from the provisions of settlement treaties, such a claim can only be derived from the LEtr. Persons who hold a settlement permit are no longer subject to the Limitation Regulation, are free to choose their employers, and are no longer taxed at source.

Permit Ci: Residence Permit with Gainful Employment

The residence permit with gainful employment is intended for members of the families of intergovernmental organizations and for members of foreign representations. This concerns the spouses and children up to 25 years of age. The validity of the permit is limited to the duration of the main holder's function.

Permit G: Cross-Border Commuter Permit

Cross-border commuters are foreign nationals who are resident in a foreign border zone and are gainfully employed within the neighboring border zone of Switzerland. The term "border zone" describes the regions which have been fixed in cross-border commuter treaties concluded between Switzerland and its neighboring countries. Cross-border commuters must return to their main place of residence abroad at least once a week.

Permit L: Short-Term Residence Permit

Short-term residents are foreign nationals who are resident in Switzerland for a limited period of time - usually less than a year - for a certain purpose with or without gainful employment.

Third-country nationals can be granted a short-term residence permit for a stay of up to one year, provided the quota of the number of third-country nationals staying in Switzerland has not been met. This is fixed annually by the Federal Council. The period of validity of the permit is identical with the term of the employment contract. In exceptional cases, this permit can be extended to an overall duration of no more than 24 months if the holder works for the same employer throughout this time. Time spent in Switzerland for a basic or advanced traineeship is also considered short-term residence. Permits issued to foreigners who are gainfully employed for a total of no more than four months within one calendar year are not subject to the quota regulation.

Permit F: Provisionally Admitted Foreigners

Provisionally admitted foreign nationals are persons who have been ordered to return from Switzerland to their native countries, but in whose cases the enforcement of this order has proved inadmissible (*e.g.*, violation of international law), unreasonable (*e.g.*, concrete endangerment of the foreign national), or impossible for technical reasons of enforcement. Thus, their provisional admission constitutes a substitute measure. Provisional admission may be ordered for a duration of 12 months and be extended by the canton of residence for another twelve months at a time. The cantonal authorities may grant provisionally admitted foreign nationals work permits for gainful employment irrespective of the situation on the labor market and in the economy in general. A residence permit granted at a later date is subject to the provisions of the LEtr.

Other Comments

Holders of an EU/EFTA permit are entitled to family reunion, regardless of the nationality of their family members. Qualifying family members may include the spouse, registered partner in homosexual couples, and children under 21. The parents and children over 21 also qualify, if financially dependent on the main permit holder. If family members of EU/EFTA nationals do not have EU/EFTA nationality, they may be subject to visa requirements when entering Switzerland before having received their family reunion permits.

Taiwan, Republic of China

Executive Summary

Taiwan has a 3-tier immigration protocol that differentiates foreign nationals in general, PRC nationals and citizens of Hong Kong SAR and Macau SAR. To better reflect the evolving needs of its globalized economy, the government of Taiwan has taken steps to streamline many of its entry and immigration requirements, such as simplifying the qualifications that non-Taiwan citizens must meet in order to obtain a work permit and relaxing the entry rules for PRC nationals and citizens of Hong Kong SAR and Macau SAR. In this brief, the term “foreign nationals” means non-Taiwan nationals other than nationals of the Peoples Republic of China, Hong Kong SAR or Macau SAR.

Most foreign national business travelers may obtain short-term visitor visas through a Taipei Economic and Cultural Office or ROC (Taiwan) Embassy or Consulate, unless they are from countries that participate in Taiwan’s visa-exempt program. Foreign nationals who intend to work in Taiwan must meet certain requirements in order to obtain a work permit. Nationals of the PRC and citizens of Hong Kong SAR and Macau SAR may travel to and work in Taiwan, provided that they meet the special immigration and entry requirements and policies.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for ROC visas, whether processed through ROC Embassies and Consulates, Taipei Economic and Cultural Offices or overseas Representative Offices.

The National Immigration Agency of the Ministry of the Interior is responsible for immigration and naturalization services for foreign

nationals, PRC nationals, and citizens of Hong Kong SAR and Macau SAR.

The Bureau of Employment and Vocational Training of the Council of Labor Affairs of the Executive Yuan is responsible for processing and issuing work permits.

Current Trends

The governments of Taiwan and the Peoples' Republic of China have executed the Economic Cooperation Framework Agreement ("ECFA") on June 29, 2010. Therefore, the exchanges between the Taiwan Strait in many fields will increase in a speedy manner. As such, the Taiwan government continues to relax its restrictions on the immigration and short term visit and relevant procedures applicable to PRC nationals.

Business Travel

Visitor Visas

Foreign nationals who intend to travel to Taiwan for business visits should apply for a Visitor Visa at an overseas ROC Embassy, Consulate or trade office unless they are from countries that participate in Taiwan's visa exempt program.

Passport holders from certain countries are eligible for a visa waiver for their visits not exceeding thirty days. The visa-exempt program currently includes Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, U.K., U.S.A. and Vatican City State ("Visa-Exempt Countries").

Travelers entering into Taiwan on a Visitor Visa must hold return or onward air tickets. Emergency or temporary passport holders of Visa-Exempt Countries who wish to stay up to thirty days and their emergency or temporary passport is valid for at least six months (or for U.S. citizens who hold an ordinary passport that is valid for less than six months), they may apply for landing visas upon arrival.

Training

Organizations that meet the following conditions are eligible to sponsor foreign nationals for internships in Taiwan - with exceptions for special cases that are approved by the competent authority of the target industries:

- Domestic and foreign-invested enterprises with annual revenues of at least NT\$10 million in the most recent year, or new domestic and foreign-invested enterprises with capital of at least NT\$5 million;
- Taiwan branches of foreign enterprises with annual revenues of at least NT\$10 million, or Taiwan branches of new foreign enterprises that have operating funds of at least NT\$5 million;
- Taiwan representative office of foreign companies procurement of at least US\$1 million, although no minimum procurement amount is required for financial service businesses;
- Free Trade Zone enterprises regulated by Article 3, subparagraph 2 of the Act for the Establishment and Management of Free Trade Zones;
- Corporate bodies under the MOEA that have business funds of at least NT\$5 million in the most recent year; or

- Foreign chambers of commerce.

Applicants are limited to a maximum stay of six months, with the possibility of a single extension of up to the same length.

Employment Assignments

Both foreign nationals who wish to work in Taiwan and their employers in Taiwan must meet the qualifications criteria before the foreign nationals will be granted work permits. The Bureau of Employment and Vocational Training (“BEVT”) serves as the country’s one-stop-shop for work permits for foreign professionals. The BEVT aims to reduce the confusion that existed when different governmental organizations were separately responsible for processing and issuing foreign work permits for professionals in industries under their purview. The BEVT processes work permits in the following areas:

- Architecture and civil engineering;
- Transportation;
- Taxation and financial services;
- Real estate agencies;
- Immigration services;
- Attorneys-at-law (legal services);
- Technicians;
- Medical and/or health care;
- Environmental protection;

- Cultural, sports and recreation services;
- Academic research;
- Veterinarians;
- Manufacturing;
- Wholesaling; and
- Other jobs designated by the Central Competent Authority and competent authorities.

Employer Qualifications

Employers seeking to engage foreign technical and professional personnel to work in Taiwan must satisfy one of the following criteria:

- Local companies established for less than one year must have operating capital of at least NT\$5 million; or companies established for more than one year must have annual revenue of NT\$10 million for the most recent year or average annual revenue of NT\$10 million for the past three years; or with average import/export transactions of at least US\$1 million or average agent commissions of at least US\$400,000.
- Foreign branch offices established in Taiwan for less than one year must have operating capital of more than NT\$5 million; or foreign branch offices established for more than one year must have annual revenue of at least NT\$10 million for the most recent year or average revenue of NT\$10 million for the past three years; or with average import/export transactions of at least US\$1 million or average (agent) commissions of at least US\$400,000.

- Representative offices of foreign companies that have been approved by the competent authorities at the central government level and has actual performance record in Taiwan.
- Research and development centers and business operations headquarters that have applied to establish their business and have been approved by the relevant competent authorities concerned at the central government level.
- The employer has made substantial contribution to the domestic economic development. Alternatively, he, she, or it has a special circumstance that is treated as a special case by the central governing authorities and central competent authorities. After the joint consultation between the authorities, the authorities have approved the circumstance.

Foreign National Employee Qualifications

Foreign nationals other than a company's managerial representative must, as applicable, meet the education and experience requirements listed below before being granted a permit to work in Taiwan:

- Earn a master's degree or above in a relevant field;
- Earn a bachelor's degree in a relevant field and with more than two years' working experience in a specific field;
- Have been employed with multinational companies for more than one year and is assigned by that company to work in Taiwan; or
- Professionally trained or self-taught specialists who have more than five years work experience in their specialization and have demonstrated creative and outstanding performance.

The above-mentioned qualifications are not required for a foreign national employed as an executive or managerial officer (*e.g.*, General Manager or Branch Manager) of a foreign company in Taiwan.

Resident Visa and Alien Resident Certificate (“ARC”)

Resident visas may be granted to foreign nationals who intend to stay in Taiwan for more than six months for the purposes of joining family, pursuing studies, accepting employment, making investments, doing missionary works, or engaging in other activities. A resident visa is valid for three months, good for a single entry or multiple entries, and allows a stay in Taiwan for a period of more than six months.

Applicants coming to Taiwan for employment or investment purposes are required to submit relevant documents to the competent authorities of the central or municipal/county government for approval. Resident visa holders for various purposes must apply for an ARC within fifteen days of their arrival in Taiwan. A multiple re-entry permit will be automatically included in the ARC so that ARC holders may leave and re-enter into the country as many times as they require. The length of residence will depend on the validity date of the ARC.

A foreign national who holds a Visitor Visa that allows him or her to stay in Taiwan for more than sixty days (which is not otherwise annotated by the issuing authority to prohibit extensions) can directly apply to the National Immigration Agency for an ARC, provided that at least one of the following requirements is satisfied:

- Is married to a ROC citizen who resides in Taiwan and has a valid household registration or is allowed to reside in Taiwan;
- Is younger than twenty years of age and his or her immediate relatives are ROC citizens who have valid household registrations or are allowed to reside in Taiwan;

- Has obtained employment approvals issued by the Bureau of Employment and Vocational Training or other relevant competent authorities;
- Are permitted by the Ministry of Foreign Affairs for diplomatic reasons.

Other Comments

Foreign nationals may apply for an Alien Permanent Resident Certificate (“APRC”) after a period of legal and continuous residence. A waiver of many of the requirements of the APRC may be granted to foreign nationals who have made special contributions to Taiwan or have acquired high technology knowledge, as well as to qualified investors. Citizenship through Naturalization is possible.

Hong Kong SAR and Macau Citizens

The Taiwan government does not treat Hong Kong SAR and Macau SAR citizens as PRC nationals or foreign nationals. This special category includes persons who hold Certificates of Identity or passports issued by the governments of Hong Kong SAR or Macau SAR, BNO, or Portuguese passports. Citizens of Hong Kong SAR or Macau SAR who visit Taiwan or seek to become residents of Taiwan must apply for Entry and Exit Permits. In Hong Kong SAR, applications can be made at the Chung Hwa Travel Service.

Citizens of Hong Kong SAR or Macau SAR, who were born locally, hold valid Entry and Exit Permits, or have previously been admitted to Taiwan, may apply for a fourteen-day Temporary Entry and Stay Certificate upon arrival. This Certificate may be extended under certain circumstances.

Since 2005, expedited thirty-day Temporary Entry and Stay Certificates have been available online through the website of the

National Immigration Agency. Approved applications will automatically generate reference numbers that enable the applicants to pick up their Temporary Entry and Stay Certificates from the Chung Hwa Travel Service in person. The Certificate is good for two entries within three months from the date of issue.

Entry and Exit Permit

To qualify for an Entry and Exit Permit, an applicant must:

- Have been to Taiwan before;
- Be a Hong Kong SAR or Macau SAR permanent resident who holds a passport that is valid for more than six months; and
- Submit one passport-sized photo, a self-addressed return envelope, original and photocopy of the Hong Kong SAR or Macau SAR permanent identity card.

The processing time at Chung Hwa Travel Service in Hong Kong SAR is approximately two weeks. A Taiwan Entry and Exit Permit is usually granted, valid for six months, for an initial period of stay of three months. Thereafter, renewals are granted for various periods.

Thailand

Executive Summary

The Thai work permit requirements and immigration law are based primarily with a view towards maintaining national security, and fundamentally serve to control foreigners staying and working in the country. However, there are some provisions that facilitate foreign investors. A foreign national therefore needs to plan carefully in order to utilize or legally enjoy the privileges afforded under the law. Otherwise, he may find himself at risk of constituting a criminal offence, which carries a severe penalty of imprisonment of up to five years.

Key Government Agencies

The Police Immigration Bureau is responsible for screening all foreigners arriving at port of entries nationwide. Foreigners may enter the country with an appropriate visa issued by a Thai Embassy outside of Thailand. Upon the supervision of the Ministry of Foreign Affairs, a Thai Embassy may grant a visa based on the relevant regulations and Ministerial Policy. A foreigner who wants to work in Thailand must separately apply for a work permit through the Employment Department, the Ministry of Labor.

Current Trends

Strict enforcement of the Immigration and work permit laws are emphasized, to counter the illegal entry of neighbor country nationals. The rigid rules apply to all foreign nationals without discrimination based on race or nationality. Some of the current rules are impractical for foreign investors to legally work in Thailand. A large number of foreigners come to illegally work without an appropriate visa, *e.g.* a tourist visa, since they do not have an employer in Thailand to sponsor their applications. A new, revised Work Permit Act has been enacted

since the beginning of 2008. However, the main concepts of the old criteria are still applicable to current cases. The criteria for the granting of a work permit take into account demand for specific expertise of certain categories of foreign workers.

Business Travel

Non Immigrant Business Visa (Business Visa)

Foreigners who wish to work in Thailand are required to apply for a Non-Immigrant Business Visa from a Thai Embassy outside Thailand. A business visa is one of the requirements of the work permit application. If a foreigner does not have a non-immigrant visa, he is not eligible to locally apply for a work permit in the country. The business visa allows a holder to enter and stay in Thailand for 90 days. Legally speaking, he is not automatically allowed to work. He must separately apply for a work permit sponsored by a qualified employer in Thailand. Many foreigners frequently misunderstand that this business visa granted by a Thai Embassy allows them to work when entering the country.

After the expiry of 90 days, they may locally apply for a visa extension with the Immigration Police Bureau. The maximum period of the extension is one year. The current criteria set by the Immigration Police impose very strict rules on an employer in Thailand who sponsors a foreigner. An employer, in its capacity as a sponsor, must be qualified in terms of their employment ratio between Thai national and foreign workers. The corporate structure and the tax payment of the local sponsor must also meet the criteria as well. Otherwise, a foreigner may be not eligible to extend his visa, even though he himself may be a qualified person in terms of his expertise.

Visa Waiver

There are no visa waivers for any foreign business persons to work in Thailand. All foreigners need to apply for a non-immigrant business visa from a Thai Embassy. Otherwise, a foreign national will not be eligible to apply for a work permit in the country. Consequently, he cannot legally work in Thailand, although he can easily enter Thailand with a visa exemption for the purpose of tourism, which is permitted to some specific foreign nationals. The length of such a stay is 30 days. At present, the following countries are presently qualified under the visa exemption scheme: Australia, Austria, Bahrain, Brunei, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Kuwait, Luxembourg, Malaysia, The Netherlands, Norway, New Zealand, Oman, the Philippines, Portugal, Qatar, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the UAE, the USA, and the UK. The list of qualified countries changes regularly, and unfortunately, there are no official websites promptly updating these changes. The Ministry of Foreign Affairs may be an initial source to start exploring for searches, at <http://www.mfa.go.th>.

Training

Training is considered as a form of work. A foreigner who is to be engaged in on-the-job training in Thailand must apply for a non-immigrant business visa to enter the country, and then apply for a work permit from the Employment Department, sponsored by an employer in Thailand. The length of stay permitted under the non-immigrant visa is 90 days. If the foreign national wants to extend his stay, his employer in Thailand must be qualified in accordance with the criteria set by the Immigration Bureau. Compensation is compulsory and must be declared in the application. If it is less than the minimum amount set by the authorities, the application may be rejected. It is currently quite difficult for a foreigner to work as a trainee in Thailand. An application is most likely to be denied by the authorities. The authorities always impose a condition on any

foreigner granted a permit for training to transfer his knowledge to Thai employees. If he fails to demonstrate that he has done so, his permit may not be renewed after it expires.

Employment Assignments

Intracompany Transfer Assignment: Non-Immigrant B Visa

Foreign employees who are transferred to work in Thailand are required to apply for a non-immigrant B visa from a Thai Embassy prior to entering the country, which allows them to stay for 90 days. They must also separately apply for a work permit sponsored by a Thai subsidiary of the multinational company as a responsible employer in Thailand. There are no special visas to be issued for a foreigner who is posted to work in Thailand. The non-immigrant B visa is required for all foreigners who intend to work in Thailand. The visa allows a foreigner to initially stay for 90 days. Within this period, they must have their subsidiaries or employers in Thailand obtain a work permit before commencing work. Otherwise, they cannot legally work in Thailand, even though they can enter the country with a non-immigrant visa.

The family member of an applicant may obtain a non-immigrant “O” (Others) visa, which also allows them to stay 90 days. The length of stay can be extended if the applicant can extend his visa when in the country. Genuine family status is always verified by the authorities. A marriage certificate and birth certificates if they have children are required to be presented for verification. Currently, a de facto status is not acceptable to the authorities.

Other Comments

According to the current rules and practice of the authorities, only non-immigrant business visas are issued to businessmen traveling to Thailand. The non-immigrant business visa covers all types of

business purposes, *e.g.* training, employment assignment, doing business, company management, etc. The non-immigrant visa is a pre-requisite requirement for a foreigner who wants to work in Thailand.

The process of applying for a non-immigrant business visa is quite simple and takes around two working days at any Thai Embassy. Upon the discretion of the Embassy, some nationals (*e.g.* Indians, Pakistanis) may have to apply for a non-immigrant visa in their home countries. Unlike the work permit-combined immigration system (*e.g.* as in the USA, Australia, or Canada), the foreign work permit law is independent and separate from the Immigration law. The Employment Department, the Ministry of Labor, is in charge of locally granting and controlling work permit matters. The Immigration Police Bureau governs the immigration law to control foreigners who enter or leave the country and have the authority to determine whether or not to extend foreigners' visas.

Some foreigners may obtain a non-business visa from a Thai Embassy, but they may be unable to locally receive a work permit due to unqualified employer sponsoring. They could possibly obtain a work permit from the Employment Department, but would not be able to extend their visa, because of the disqualifying characteristics of the employer.

The current rules for granting a work permit are based on proof of investment, as set out by the Employment Department. A sponsor, as an employer in Thailand, must have paid-up capital of Baht 2 million baht per each individual work permit. An applicant must have sufficient experience and a suitable educational background pertinent to the position applying for a work permit.

A foreigner required to engage in work which is of a necessary and urgent nature for a period of less than 15 days may currently enter Thailand without a non-immigrant B visa. However, the foreign

national must submit a work notification to the Employment Department before commencing work. Machinery repairs by foreign technicians are an example of work of a necessary and urgent nature.

Some professions (*e.g.* lawyers, architects) are prohibited to foreigners for applying for a work permit.

A foreigner who has received a work permit may be eligible to extend his visa (a 90-day non-B visa) in Thailand. A sponsor that is a company employer in Thailand must have shareholders' equity of not less than Baht 1 million. In addition, the ratio of employment between Thais and foreigners must not be less than 4 to 1. If a company employs one foreigner, at least 4 Thai staff (full-time) must be hired. Otherwise, the foreign employee may not be able to extend his visa, even if he has a work permit.

A foreigner who has been staying in Thailand for up to 90 consecutive days must notify the Immigration Police Bureau for every 90 days of stay. Failure to comply with this requirement will be subject to a fine.

Work permit and immigration planning is becoming increasingly significant, as enforcement by the authorities gets tougher. Employers involved in transactions such as mergers, acquisitions, re-organizations, and financial restructuring must evaluate the impact on the employment eligibility of foreign nationals when structuring such transactions.

A company with paid-up capital of at least Baht 30 million is entitled to use the One Stop Service Center for submission of work permit and visa extension applications. The One Stop Service Center is designed to facilitate the granting of work permits and visa extensions to executive level foreign employees within one day. The One Stop Service Center process reduces the time for considering applications, compared with the normal channel which may take up to one month.

Foreigners who have been staying and working in Thailand for three consecutive years are eligible to apply for permanent residency. The process normally takes at least one year. Criminal or character checks of an applicant in his home country must be made before lodging an application through the Immigration Police Bureau. The final decision for approval rests with the Minister of Interior's discretion. The authorities always consider an applicant's work qualifications and tax payment record paid to the Thai Government and compelling reasons tight to Thailand.

According to the general practice of the authorities, foreigners who have been granted permanent residency may be eligible for naturalization of citizenship after holding permanent resident status for at least 10 years. An applicant must clearly present his background and qualifications which benefits Thailand. Normally, the process may take up to two years after an application is submitted. The Minister of Interior is the person who gives the final approval.

Republic of Turkey

Executive Summary

Foreigners entering the Republic of Turkey (“Turkey”) for the purposes of employment, regardless of the length of stay, are required to obtain a Work Permit. The Work Permit is granted by the Turkish Ministry of Labor and Social Security. The Work Permit application should be initiated by the employee upon visiting his or her nearest Turkish Consulate/Embassy in person with the requisite supporting documents in the event that such employee does not have a Residence Permit in Turkey with a validity period of at least six months which is a prerequisite for making a direct application to the Ministry for a Work Permit.

The Republic of Turkey permits the citizens of certain countries to make a direct application in Turkey for a Residence Permit; and therefore those who have accordingly been granted a Residence Permit with a validity period of at least six months (for any reason, except education and training) can directly apply to the Ministry of Labor and Social Security for a Work Permit within this period.

Key Government Agencies

Turkish Consulates/Embassies are responsible for visa processing and Work Permit applications abroad.

The Ministry of Labor and Social Security is responsible for granting Work Permits.

The Foreigners’ Branches of the Local Police Departments are responsible for granting Residence Permits.

The Local Border Police Authorities are responsible for visa processing for the citizens of certain countries.

Current Trends

According to the Law on Work Permits for Foreigners (“Law”) and the Regulation on the Implementation of the Law on Work Permits for Foreigners (“Regulation”); the business inspectors of the Ministry of Labor and Social Security and the insurance inspectors of the Social Security Institution make audits in accordance with the provisions of the Labor Law to determine as to whether or not the liabilities attributed to foreigners and their employers in the Law and the Regulation are fulfilled.

The inspection and audit members of the departments included in the general budget and the administrations with added budget also make inspections to determine as to whether or not the employers that employ foreigners and the foreigners fulfill their obligations arising from the Law, during any kind of audit and inspections performed by such inspection and audit members in the workplaces. The inspection results are also notified to the Ministry of Labor and Social Security.

If a foreigner works unregistered and without a Work Permit, the situation is determined with an official report. In order to implement the administrative penalty in the Law for the foreigner and the employer or the employer’s representative, the said official report is sent to the District Offices of the Ministry of Labor and Social Security. Since the foreigner can be notified about the penalty abroad as well, within the framework of Law of Notice, the foreigner’s address abroad is also mentioned in the official report. During the inspections, the unregistered foreigner’s entry to Turkey, visa, passport and residence permit issues are investigated and the illegal foreigner’s deportation procedure is initiated.

Upon implementation of the Law the above stated administrative fine process comes into force for the foreigners who work without a Work Permit and for their employers. If the said action is repeated, the administrative fines are doubled.

As per the Law, the employer has to pay not only the fines imposed against the employer and the foreigner, but also the accommodation costs, travel costs for returning to their countries and the costs of treatment, if necessary, for foreigner's spouses and children (if any).

If the deported foreigners do not pay the administrative fines, the foreigners are made subject to a program named “Ç” in order to collect the fines at the time of entry into Turkey and foreigners will not be accepted without payment.

Business Travel

A foreigner can enter into Turkey with a Tourist Visa for business travels for the purposes of meetings, negotiations, etc. provided that the foreigner does not do any business in Turkey (*i.e.* the foreigner does not engage in commercial activity) and that the foreigner does not work in Turkey.

As a general rule, the foreigners desiring to travel to Turkey for tourism purpose should apply to his/her nearest Turkish Consulate/Embassy for a Tourist Visa in person with supportive documents particularly when the visa application is lodged for the first time. Visa applications may also be received by mail in exceptional cases, especially in geographically large countries and when the applicant is well known by the Turkish Embassy/Consulate where the application is lodged.

The citizens of certain countries have the possibility to obtain their visas at the Turkish border gates (sticker visa) upon submission of (i) a valid travel document (passport) (It should be valid at least three months longer than the expiry date of the visa requested.) and (ii) Non-refundable visa processing fee (the amount differs depending on the nationality and visa type). Any other documents which are relevant to the applicant's visit/stay in Turkey can be requested by the

Turkish border officials and also note that only tourist visas may be issued at the Turkish border gates.

Single Entry Tourist Visa is valid for a period of one year and allows its holder, depending on the nationality and passport type, to stay in Turkey up to three months and to visit the country only once.

Multiple Entry Tourist Visa is valid for a period of up to five years and allows its holder to make multiple visits and, depending on the nationality and passport type he/she can stay one to three months each time he/she enters into Turkey.

Residence Permits

An entry visa enables the bearer to stay in Turkey for the duration stated on the visa sticker. However, if the person intends or is obliged to stay in Turkey longer than the permitted duration, this extension is subject to the approval of the Ministry of Interior. In this case, the person has to obtain a Residence Permit.

Applications for Residence Permits should be made to the Foreigners' Branch of Local Police Departments within 30 days upon arrival at Turkey. Applicants are generally required to submit Work Permit, Work Visa, Education Visa or Research Visa and a letter describing his/her circumstances (*i.e.* employment, education, marriage to a Turkish citizen).

Once the person is granted with the Residence Permit, he/she can enter into Turkey multiple times as long as his/her Residence Permit is valid and thus he/she does not need a visa for entry into Turkey. If the extension of the Residence Permit is required, the extension or renewal should be made timely before the expiry date. The person is recommended to have the validity of the Residence Permit extended before leaving Turkey, if the validity of the Residence Permit is due to expire or has already expired.

Training

There is no type of visa in Turkey designed exclusively for training. For classroom-type training, a foreigner can enter into Turkey with a Tourist Visa and for on-the-job training, the same procedure for employment assignments which are subject to Work Permit applies.

Employment Assignments

Conduct of business in Turkey requires an establishment of a Turkish entity and a foreign employee requires a Work Permit to work for a Turkish entity. During the establishment period it may be argued that such foreigner is traveling back and forth from his/her country to Turkey (with a Tourist Visa) to assist the formation of the Turkish entity. If, however, the intention is for a foreign company to do business in Turkey prior to the establishment of its Turkish entity, such company may consider entering into Technical Service Agreement or Consultancy Agreement whereby the foreigner provides services to a third party Turkish entity.

Foreigners who have already been granted Residence Permits in Turkey which is valid for at least six months (for any reason, except education and training) may directly apply for Work Permits to the Ministry of Labor and Social Security with the supportive documents. Otherwise, the Work Permit application should be initiated by the employee upon visiting his or her nearest Turkish Consulate/Embassy in person with the requisite supporting documents.

The application for a Work Permit to be made from abroad through the Turkish Consulate will be for a Work Permit for a Definite Period of Time as detailed herein below.

Work Permit for a Definite Period of Time

Unless otherwise is provided in the bilateral or multi-lateral agreements to which Turkey is a party, Work Permit for a Definite

Period of Time is granted for a period of at the most one year in order for the foreigner to work in a certain workplace or enterprise and in a certain job, taking into consideration the situation in the business market, developments in the labor life, sectorial and economic conjuncture changes regarding employment, the term of the Residence Permit of the foreigner and the term of the employment agreement or the work.

The Ministry of Labor and Social Security may extend or narrow down the area of validity of the Work Permit for a Definite Period of Time by taking the city, administrative border or geographical area as the basis. In this case, the Ministry of Labor and Social Security shall communicate this decision to the relevant authorities to whom the former advises the Work Permits.

After the legal working period of one year, the period of the Work Permit may be extended up to three years, provided that the foreigner works in the same workplace or enterprise and in the same job.

At the end of the working period of three years, the term of the Work Permit may be extended further for a maximum period of three years in order for the foreigner to work in the same job and with any employer of his/her discretion.

Work Permit for a Definite Period of Time may also be granted to the spouse of the foreigner, having come to Turkey to work, as well as the children under the foreigner's care, provided that they have legally resided with the foreigner without interruption for a period of at least five years.

Residing for at least 8 years or working for at least 6 years in Turkey is obligatory to obtain the Work Permit for an Indefinite Period of Time. Furthermore, in order to obtain the Independent Work Permit the foreigner should reside in Turkey for at least 5 years.

In accordance with the Regulation, all the required documents need to be submitted to the Ministry of Labor and Social Security within 10 business days following the date on which such work permit application has actually been made through the Turkish Consulate.

The consulate office then submits the visa application to the Ministry of Labor and Social Security to prepare a decision. In most cases it could take 90 days for the Work Permit to be issued by the Ministry of Labor and Social Security. The employee will be informed by either phone or e-mail once his or her application has been approved.

When the Work Permit is approved and issued by the Ministry of Labor and Social Security, the next step in the process is that the employee takes his or her passport along with applicable visa fees to the Turkish Consulate where he or she initiated the Work Permit request in order to obtain a Work Visa (which is given to the Work Permit holders and is issued for a single entry) to enter into Turkey.

A person can only apply for a Work Visa after he/she has signed an employment agreement with a Turkish employer and has applied for a work permit to the Ministry of Labor and Social Security. Finally, when the transferee arrives in Turkey, Work Permit holders must apply to the Foreigner's Branch of the Local Police Department before the commencement of the employment and at the latest within 30 days after entering Turkey to obtain a Residence Permit.

The Ministry may require additional documents. All documents in a language other than Turkish should be translated into Turkish and notarized by a Turkish Notary Public prior to submission of such to the Ministry.

In order for a final assessment of the work permit and residence permit issues, the scope and objective of the Turkish entity and the details of education and profession of each and every employee to be employed by the Turkish entity need to be known since in applications

within the scope of professional services (such as engineering) where the education of the foreigner falls within the scope and objective of the Turkish entity, diploma equivalency will also be required for the Work Permit application.

The payroll and social security obligations of the employer start as of the commencement date of the employment of the employee.

The concept of secondment does not exist in Turkey and that there is a requirement for the employees to be fully employed/paid by the Turkish entity to enable such Turkish entity to make the requisite payments to the authorities. It should be noted that “payroll agent” concept does not exist in Turkish legal system.

Following the obtaining of the Work Permit, the employee is under the obligation to make an application to the Foreigner’s Branch of the Local Police Department in order for the annotation of his Work Permit on his Residence Permit. Once such procedure is completed, the family members of the employee will be eligible to make an application to the Foreigner’s Branch of the Local Police Department in order for the issuance of a Residence Permit on their behalf based on the Work and Residence Permit issued in the name of the employee.

Other Comments

Exceptional Cases for and Exemptions from Work Permit

The Law provides for certain exceptional cases for granting Work Permits to foreigners without being subject to the periods stated in the Law. For temporary employment assignments, out of the exceptional cases, the following may be of interest:

Foreigners featuring the Status of Key Personnel. If foreigners featuring the status of key personnel, who are supposed to be

employed in the acquisition of goods and services, the performance of a task or the operation of a plant, besides, in construction and all kind of building works, by means of contracts or tenders by legally authorized ministries as well as public institutions and establishments, apply for Work Permits, their Work Permits may be exceptionally granted for the period stated in the contract or the tender.

The Law also provides for the circumstances where foreigners shall not be required to obtain Work Permits for a definite period of time stipulated in the Law depending on the circumstances concerned. A “Work Permit Exemption Certificate” is given to the foreigner under exemption upon request.

Ukraine

Executive summary

Ukrainian migration law requirements applicable to foreigners entering Ukraine on business, including for employment, are quite non-restrictive, compared to many other developed or post-Soviet countries. However, registration requirements applicable to all foreigners in Ukraine, regardless of the purpose of their visit, allow rather short time (ten days in certain cases) for compliance.

Applicable regulations have been significantly amended recently, which triggered rather zealous enforcement by Ukrainian authorities. In view of the harsh possible consequences of any migration law violations, up to and including deportation of the foreigner and heavy fines for the inviting party, business travelers and their corporate hosts should not rely on past lenient attitudes and enforcement practices of Ukrainian authorities.

Key Government Agencies

The State Migration Service, which was created in July 2009, is a specialized branch of the Ministry of Interior. In addition to the central headquarters, it also has local offices (the “Migration Local Office”) in major cities and administrative districts, main international airports and seaports, and is the key authority with respect to visa sponsorship, registration of foreigners and residency permits.

The Ministry of Labor and Social Policy, through its Employment Centers in major cities and administrative districts, is the authority issuing work permits and monitoring compliance with Ukrainian Labor laws.

The consular services of the Ministry of Foreign Affairs are responsible for issuance of visas outside the Ukraine.

The State Borderguards Service is the authority deciding on admittance of foreigners into Ukraine at the point of entry.

Certain registration functions are performed by local utility management entities (known by their Ukrainian acronym “ZHEK”).

Current Trends

From 2005, Ukraine has both liberalized its rules of entry for foreigners (cancelling visa requirement for certain travelers entering for less than 90 days) and moved towards stricter enforcement of its existing rules (*e.g.*, the requirement to register at the place of residence, the limitation of the allowed length of stay).

Due to certain amendments to the rules for entry and stay of foreigners introduced in May 2009, foreigners employed in Ukrainian branches of foreign companies (rather than in subsidiaries) currently are forced to carefully monitor the number of days they have spent in Ukraine in order to be able to travel to or from Ukraine as dictated by business needs. The efforts to lobby for further changes to the migration rules applicable to foreign employees of the Ukrainian branches to ensure that the foreign employees enjoy the same rights as foreign employees of Ukrainian legal entities (including subsidiaries) have so far been fruitless.

On balance, the legislation now allows for obtaining a work permit for a longer period of time (3 years, with an option to obtain an extension for up to 2 years), although this benefit is available only for intra-company transferees and the issue of such work permits have not been widespread.

Business Travel

Business Visa

Unless a visa waiver is available, foreign business travelers require a business visa to enter Ukraine. Such visa is easily available from any consulate of Ukraine abroad. However, an invitation letter from the Ukrainian corporate host is necessary as part of the visa application package.

All foreigners, including citizens of the countries with which Ukraine has an agreement on visa-free travel, may enter and stay for up to ninety days in total during 180 days from the date of their first entry. This limitation does not apply only to holders of work or student visas, because they, in addition to their visas, are entitled to obtain a temporary residency permit. A temporary residency permit enables the holder to enter and leave Ukraine as desired and to stay in Ukraine for the entire term of validity of the temporary residency permit (subject to completion of certain required registrations).

If a traveler needs to remain in Ukraine beyond ninety days in total within the 180 days from the date of the first entry, they need to file an application for the extension of stay with a relevant local branch of the Migration Service. The filing must be made at the Migration Local Office at least 3 work days before the expiration of the allowed term of stay and, as a matter of practice, should not be attempted before the seventieth day of stay (because the application will be considered premature). Extensions are normally granted, however, only in exceptional cases (illness precluding travel, very important family events, or business needs, *etc.*). The extensions are now granted only to foreigners who arrived on the basis of a visa (or from a country with which Ukraine has an agreement on visa-free travel) and if the local host supports the application.

It is important to remember that the extension is solely the permission to remain in Ukraine. Therefore, even if granted for the next several

months, it will expire at the moment when the foreigner leaves Ukraine. As a result, the foreigner will be unable to return to Ukraine before the expiration of 180 days' period (from the moment of the foreigner's entry) within which the extension was requested.

Under the applicable Ukrainian legislation, a foreigner must apply for the registration of his/her place of residence in Ukraine with the local utility management entity within ten days after moving into a particular residence. If foreigner is staying in a hotel, the registration is done by the hotel and the foreigner's personal involvement is not necessary.

Visa Waiver

Citizens of the countries which are members of the European Union, the Swiss Confederation and the Principality of Liechtenstein, the USA, Britain, Canada and Japan (but not Australia) may enter Ukraine without a visa or any invitation letter for business for a term of up to ninety consecutive days. Visa-free entry for private purposes or tourism is also allowed to citizens of the abovementioned developed countries, which makes it possible for business travelers to take their spouses, children and other family members along. However, this waiver of visa requirement is not intended for foreigners coming for employment purposes into Ukraine.

In addition, citizens of certain countries (including certain countries of the former Soviet Union) need to present evidence that they have sufficient means to sustain them for the entire period of their visit to Ukraine. If such evidence is not provided, the person will be denied entry into Ukraine and the person's visa may be cancelled.

Training

Any non-paid trainees can come either without a visa or on the basis of a business visa (as may be applicable and described in further detail in the Business Travel section).

Any trainee who will receive any remuneration from the Ukrainian corporate host and whose functions are akin to those of an employee or of a service provider to the Ukrainian host require a work permit and a work visa (and a temporary residency permit), regardless of the duration of the training. All other requirements applicable to foreign employees of Ukrainian entities (HIV test, registrations, *etc.*) will also apply.

Therefore, any short-term trainees (arriving for less than 3 months) or candidates for urgent trainings should be brought into Ukraine on non-paid basis. Otherwise, the management effort required to arrange for the work permit, work visa and all registrations and other procedures applicable to foreign employees of Ukrainian entities and the waiting period (about 2 months for a work permit) seems hardly justified.

Employment Assignments

Ukrainian legislation has established a number of requirements applicable to all foreign employees of the Ukrainian corporate host. The Ukrainian company itself must be registered with the Migration Local Office to be able to act as corporate host and to issue relevant visa invitations to business travelers and foreign employees or to apply for the extension of their stay. The registration of the company with the Migration Local Office is also required in order to have a foreign employee registered in Ukraine and to obtain a temporary residence permit for such employee.

All foreigners working for a Ukrainian legal entity (including subsidiaries of foreign companies) must have work permits. Applicable Ukrainian legislation expressly prohibits that:

- the company enter into employment relations or a service agreement with a foreigner; and/or
- a foreigner perform any functions on behalf of the company, including negotiation or signing of contracts, making filings with the authorities, opening or operating bank accounts, *etc.*, prior to the obtaining by the company of a work permit for such foreigner.

The documents that comprise the application for a work permit, which must be submitted by the company to a relevant Employment Center, are numerous and require a visit to the company's tax office to obtain a certificate of good taxpayer status.

Unlike many other countries, Ukraine has not introduced any quotas for foreign labor, either by type or worker categories or by country of citizenship. Also, Ukraine allows to hire a foreigner even if equivalent Ukrainian specialists are available in the locality, provided, however, that the employer is able to demonstrate superior education and skill of the foreigner. However, such superiority must be well described and the proof of the foreign employee's education, skills and experience is necessary (in the form of the university diploma, certificates, and resume). The processing of the application depends on the workload of the relevant Employment Center, but in Kyiv, the capital city of Ukraine, it currently does not exceed 2 months.

Work permits are issued for the period of 1 year (3 years – for intra-company transferees). This term may be prolonged for the next year by filing an application, together with all the above mentioned documents, with the relevant Employment Center at least 1 month prior to the expiration of the term of the current work permit. Such extensions may be granted for a total of no more than 5 years (an extension for two years is available for intra-company transferee).

A foreign employee must also obtain a Ukrainian Tax ID before the Company can make salary (or any other) payments to the foreign

employee. The Company acts as the tax withholding agent with regard to the withholding and remittance of the foreign employee's taxes and social contributions related to the salary into Ukrainian. The employee, if tax resident in Ukraine, is responsible for filing annual tax returns on the employee's worldwide income to the Ukrainian authorities.

After the work permit has been obtained by the Company, the foreign employee of the Company is eligible for an "IM-1"-type Entry Visa (the "Work Visa"). The Work Visa must be obtained from a diplomatic representation with a consular service of Ukraine abroad. The Work Visa is normally issued for a period of 1 year. In order to renew such visa, the foreigner will need first to renew the work permit and then to travel outside Ukraine to apply to a Ukrainian consulate for a visa. As noted above, the foreign employee can extend the employee's allowed term of stay in Ukraine without leaving Ukraine by applying to and submitting his/her passport to the relevant the Migration Local Office. However, such extension is not an extension of the visa and, in addition, it will expire immediately upon the foreigner's exit from Ukraine for any reason.

Upon foreigner's entry into Ukraine on the basis of the Work Visa, the foreign employee's passport must be submitted for registration with the relevant local branch of the Migration Local Office before the expiration of ninety days from the date of the foreigner's entry into Ukraine. The applicable Ukrainian legislation permits the Migration Local Office to request any additional documents, which they may deem necessary for the registration of the foreigners' passports.

The Work Visa is issued as a single-entry visa only. However, after (i) the foreign employee receives a temporary residence permit (a required document); (ii) has his/her passport marked with a stamp "WORK PERMIT HAS BEEN GRANTED" by the Migration Local Office; and (iii) the foreign employee has registered at the place of his/her residence, the foreigner may enter Ukraine on the basis of the

combination of that stamp and of the temporary residence permit at any time and as many times as necessary during the term of validity of the work permit (and of the Work Visa).

Since Ukrainian rules used to contain gaps or be unclear with respect to the procedures and documents necessary to receive certain permits or registrations, some foreigners had ignored the legislation and entered Ukraine either on the basis of “B”-type entry visa (which is relatively easy to obtain), or on the basis of “no-visa” entry regime (available for business travelers from certain countries). However, the loopholes that have made such approach possible in practice (but in no way compliant with the existing law) have been eliminated by now.

Other Comments

Specific considerations apply to appointment of a foreigner to the position of CEO (Director) of a newly established Ukrainian company (subsidiary).

Although there is no express prohibition established in law, as a matter of practice, a foreigner may not be the first Director of a newly created Ukrainian legal entity. This is due to the fact that a foreigner may not sign any documents on behalf of the newly created company until the foreigner has obtained a Ukrainian work permit. At the same time, a number of papers must be signed by the Director in the process of establishing a new company, including the application(s) for the work permit(s) for foreign employee(s). Therefore, a Ukrainian citizen has to be appointed to temporarily act as the Director of the subsidiary until a work permit is obtained for the foreigner appointed to the position of the Director.

Also, as a prerequisite for registering the Director as an authorized signatory to operate the bank accounts of a company, some Ukrainian banks require a copy of the passport of the Director evidencing the registration of the Director at the place of his/her residence in Ukraine,

or a copy of the lease agreement indicating the Director as the lessee or a resident in the apartment. The absence of such registration/lease agreement, however, normally occurs only if the Director does not physically reside in Ukraine (but manages the company remotely or through short-time visits) and as, a consequence, does not have any accommodation (and registered address) in Ukraine. For that reason, it is best not to appoint a foreigner to the position of the Director, if it is clear that this person will not actually reside in Ukraine.

United Arab Emirate

Insert here

United Kingdom

Executive Summary

The United Kingdom completely overhauled its immigration system for employment related applications in 2008. The introduction of a points-based system, sponsorship licenses, and compulsory identification cards for foreigners are all part of the biggest shake up to immigration and border security in 45 years.

The UK government has also announced that there will be a cap on the number of non-EU migrants coming to the UK. From April 2011, there will be a full annual limit on the number of non-EU migrants coming to the UK. In the meantime, an interim cap will operate from July 19, 2010 to March 31, 2011 on Tier 1 (General) and Tier 2 (General) applications.

Key Government Agencies

The UK Border Agency was formed in 2008 and is responsible for work formerly carried out by the Border and Immigration Agency, as well as the Foreign and Commonwealth Office's Visa Services and other agencies.

The UK Border Agency is responsible for processing applications for permission to enter and stay in the country, securing borders and controlling immigration. Officials are also posted at British embassies and consular posts abroad to process visa applications.

Current Trends

A new Points-Based System has now been introduced. This has replaced all of the employment and study related categories, reducing the current eighty three entry routes to five broad categories or tiers. The categories now introduced are the Tier 1 (General) and Tier 1

(Post Study Work), Tier 1 (Investor), Tier 1 (Entrepreneur), Tier 2 (General) and Tier 2 (Intra Company Transfer) (“ICT”), Tier 4 (Students) and Tier 5 (Temporary workers).

Tier 1 (General) has effectively replaced the old Highly Skilled Migrant Category, whilst Tier 1 (Post Study Work) has replaced the categories allowing employment upon completion of a degree course in the UK. Tier 2 (General) and (ICT) have replaced the old work permit scheme. Tier 5 is divided into five subcategories covering various categories of temporary work. The Tier 5 (Youth Mobility Scheme) replaced the old Working Holidaymaker Scheme.

Background

British citizens, Commonwealth citizens with the right of abode in the UK, and Irish citizens are not subject to immigration control and do not require permission to enter or remain in the UK. Their passports will not be stamped on entry and they are free to return to the UK however long they stay outside.

Nationals of the European Economic Area (“EEA”) countries, *i.e.*, nationals of the European Union countries - Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden - and the ten accession countries who joined on May 1, 2004, plus nationals of Iceland, Liechtenstein and Norway are, in general, free to come to the UK with their dependants to reside and work in the UK without any prior formalities.

Certain formalities apply with respect to nationals of Romania and Bulgaria, which acceded to the EU on January 1, 2007.

Swiss nationals also benefit from the same rights as most EEA nationals, although Switzerland is not a member of the EEA.

Nationals of Cyprus and Malta were granted the right to take up employment straightaway across the EU.

Nationals from the remainder of the 2004 accession countries (*i.e.*, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) have also been granted an immediate right to work in the UK, unlike in many of the other EU member states where this right is being introduced over a number of years. Although nationals from the ten accession countries are free to live and work in the UK, they are required to register the details of their employment within 1 month of taking up a new job. This requirement does not apply to nationals from Cyprus and Malta. The requirement to register continues until they have been employed in the UK for 1 year. Romanian and Bulgarian nationals, though free to enter and remain in the UK, are required to obtain authorization from UK Border Agency, before commencing work, unless the particular job is exempt from this requirement or unless they had leave to remain granted before 21 December 2006.

Aliens, Commonwealth citizens without the right of abode and UK passport holders who are not British citizens (*i.e.*, British Overseas Citizens) are subject to immigration control and must obtain permission to enter or remain in the country. Their passports will normally be stamped to indicate how long they can remain and what conditions are attached to such permission.

Citizens of certain countries are termed “visa nationals” and require mandatory entry clearance before traveling to the United Kingdom for any purpose, even as visitors. Other nationals only require an entry clearance if they wish to travel to the UK for a particular purpose. Entry clearance is the process by which a person applies, at a British diplomatic post in their country of residence, for prior permission to enter the United Kingdom.

Business Travel

Business Visitor Category

Under the new revised visitor rules, there is now a separate category for Business visitors. Foreign nationals coming under the business visitor category can stay for a maximum of 6 months in any twelve-month period. Nationals from certain designated “visa national” countries must apply for a visa before traveling to the UK.

Persons entering under this category must be based abroad and not receiving a salary from a UK source. Foreign nationals will only be allowed to undertake certain permissible activities under this category for example: transacting business (*e.g.*, attending meetings and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services). Applicants must not “intend to produce goods or provide services within the UK, including the selling of goods or services direct to members of the public.”

Please note that those entering under the visitor category are not authorized to work in the UK, regardless of whether paid or unpaid.

Training

The visitor category permits foreigners to undertake some limited training in techniques and work practices used in the UK. There are strict limits on the scope of training that can be provided under this category, which must be restricted to watching demonstrations and classroom instruction only. On-the-job training in a productive work environment is not permitted and visitor visa holders cannot be paid from any UK source, although they can receive reimbursement for certain expenses.

Training and Work Experience Scheme (“TWES”) Work Permit

The Training and Work Experience Scheme (“TWES”) has now been withdrawn. Foreign nationals must either come under Tier 2 (Skills Transfer or Graduate Trainee) or Tier 5 - Temporary worker.

Employment Assignments

The general rule is that any person who is subject to immigration control cannot take up employment in the UK without a valid work permit or other form of work authorization. The main exceptions to this general rule concern: EEA nationals (except Bulgarians & Romanians); Swiss nationals and Gibraltarians.

Commonwealth Citizens with United Kingdom Ancestry

Upon proof that one grandparent - paternal or maternal - was born in the UK or Channel Islands, a Commonwealth citizen who wishes to take or seek employment will be granted an entry clearance for that purpose and does not require a work permit. Persons entering under this category will be admitted for an initial period of 3 years.

Representatives of Overseas Businesses

This category, previously named the sole representative category, allows companies without an existing UK operation to send a senior employee to the UK to establish a presence. This category now includes employees of of an overseas newspaper, news agency or broadcasting organisation. Intending entrants under this category must meet the following requirements:

- Seek entry as a senior employee with full authority to take operational decisions;

- Intend to establish and operate a registered branch or wholly owned subsidiary of their overseas employer (thereby excluding any other legal entity or type of activity) in the same type of business activity as the overseas business;
- Meet the English language requirement or has an academic qualification which is deemed by UK NARIC to be equivalent to a UK Master's or Bachelor's degree; and
- Obtain entry clearance prior to entering the UK.

Entrants under this category are admitted for an initial period of twenty four months. The sole representative category is under review and may change in the future.

Tier 5 (Youth Mobility Scheme)

This has replaced the previous Working Holidaymaker Scheme. The Youth Mobility Scheme allows young people from participating countries to experience life in the UK. Currently only the following countries are participating in the Scheme: Australia, Canada, Japan, New Zealand and Monaco. British Overseas Citizens, British Overseas Territories Citizens and British National Overseas passport holders are also allowed to apply.

The new Tier 5 -Youth Mobility category will be quota based. At the time of writing, the quota for Japan had been reached. Japanese nationals can apply again from January 1, 2011. Visa applications from the four listed countries will be accepted until their country's annual allocation has been reached. However, there is no quota for applications from British Overseas Citizens, British Overseas Territories Citizens and British National Overseas. Foreign nationals will be able to take up any work in the UK except self-employment (subject to certain exceptions); working as a professional sportsperson or working as a doctor in training. Self-employment will only be

permitted if the foreign national does not own the permanent premises from which he does business, the total value of the equipment he uses does not exceed £5000 and there are no employees.

In order to apply applicants must:

- be a citizen of a country taking part in the scheme or a British Overseas citizen, British Overseas Territories citizen or a British National (Overseas);
- be eighteen years old or over on the validity of the visa and under thirty one years old on the date of the application;
- have £1,600 in available maintenance (funds) on the date of the application; Entrants under this category are admitted for 2 years. Spouses and dependants will not be able to come to the UK as dependants of Youth Mobility participants unless they qualify under another immigration category

Tier 1 (Investors)

The old Investor category has been replaced with a new Tier (Investor) category under the Points-Based System, but the requirements remain broadly the same. Potential investors must apply for entry clearance and be able to provide evidence of:

- The applicant's own funds, under the applicant's control and disposable in the United Kingdom, of no less than £1 million, or, if the applicant can provide evidence of a personal net worth of no less than £2million, the £1 million sum for investment will be acceptable by way of a loan from a financial institution that is regulated by the Financial Services Authority (FSA);

- The source of the capital ; (if acquired within the last three months);
- Intention to invest not less than £750,000 of the capital in active and trading UK registered companies (other than those principally engaged in property investment) and may not make the investment by way of a deposit with a bank, building society or other enterprises whose normal course of business includes the acceptance of deposits; and
- Ability to maintain and accommodate the applicant and any dependants without recourse to public funds, but unlike the old category most forms of employment are permitted.

Investors are admitted for an initial period of thirty six months (it was previously twenty four months).

Tier 1 (Post Study Work)

This has replaced the International Graduate Scheme (“IGS”). It allows international students who have studied in the UK to remain in the UK after the completion of their UK degree to look for work or to work without having a sponsor. Employment as a Doctor or Dentist in Training is not permitted unless the graduate has obtained a degree in medicine or dentistry at Bachelor’s level from a recognised UK institution that holds a Tier 4 licence.

You can apply if you have been previously granted leave under IGS or have leave as a student. You must score a minimum of seventy five points for attributes which are a UK qualification, study at a UK institution, relevant immigration status during period of UK study and/or research and completing qualification within twelve months of the application. Applicants must also score ten points for English language and ten points for maintenance. An application can be made

out of country or in country and leave is granted for a maximum of 2 years.

Tier 1 (General)

This category replaced the Highly Skilled Migrant category and allows highly skilled people to come to the UK to work or take self-employment. Migrants must score a minimum of 80 (previously 75 points was required) points for age, qualifications, experience and earnings with effect from July 19, 2010. In addition, migrants must score 10 points for English language and maintenance. The increase in points will not apply to migrants who are already in the UK who are extending their leave under Tier 1 (General) or extending under one of the following categories: Highly Skilled Migrant Programme; Writers, Composers and Artists, and Self Employed Lawyers. , The UK government has also introduced a monthly cap on Tier 1 (General) applications but the limit will not apply to anyone already in the UK extending under Tier 1 (General) or switching into the Tier 1 (General) category

Migrants are initially granted an initial period of 24 months followed by 36 months on extension.

Tier 2 (General) & Tier 2 (ICT)

Tier 2 replaced the old work permit scheme, which came into force on twenty seven November 2008. Employers will need to have a license in order to employ nationals from outside of the EEA. Any existing work permit holders will be able to continue working until the expiry of their current permits. They will then have to apply for an extension and switch into either Tier 2 (General) or Tier (ICT) depending on what type of work permit application they initially entered under.

The Licensed Sponsor will be authorized to use the new Sponsor Management System. This is an on-line platform that will allow

companies to sponsor non-EEA nationals to come and work in the UK. Therefore, once the employer is registered, as a Licensed Sponsor, the company will then be ready to sponsor employees from overseas to work in the UK under the new Tier 2 categories replaced the work permit scheme. Under this system it will be up to the employer to make an assessment as to whether or not the individual meets the published criteria for a certificate of sponsorship (the new term for a work permit) to be issued. The company will then be able to issue the certificate and send it to the employee to apply for a visa.

In order to apply for a license, each employer will need to decide who to appoint to the following prescribed roles: Authorizing Officer (“AO”); Key Contact; Level 1 User and Level 2 User. All 4 roles can be filled by the same person, by 4 different people or a combination of the 2. The AO role must be undertaken by a permanent member of staff who is based in the UK. All of the other roles must either be undertaken by a permanent UK-based member of staff or a UK-based legal representative. Background checks and checks on the Police National Computer will be undertaken on all of these key personnel. Each of these roles carries some degree of responsibility for the functioning of the new system.

The “Authorizing Officer” is the most senior role within the new sponsorship system. The Authorizing Officer is responsible for assigning other key personnel and for their conduct. This individual is responsible for the activities of all users under the Sponsorship Management System (including employees and any appointed representatives). However, the Authorizing Officer does not have to be involved in the day to day operation of the Sponsor Management System and does not have automatic access to this system, but could also be a Level 1 or Level 2 User, which would give access.

The “Key Contact” acts as the main point of contact with the UK Border Agency. This individual may be contacted by UK Border Agency for any queries with applications (*e.g.*, requests for documents

or payment enquiries). The Key Contact does not have automatic access to Sponsorship Management System, but can be a Level 1 or Level 2 user as well, which would give access.

The “Level 1 User” deals with the day-to-day administrative activities of the Sponsor Management System (*e.g.*, assigning Certificates of Sponsorship to employees/prospective employees, completing change of circumstances forms, adding/removing sponsors from the system). The Level 1 User can also create and remove users from the Sponsor Management System.

“Level 2 Users” undertake the same type of administrative tasks as the Level 1 User, but cannot create and remove users. Any number of Level 2 Users can be appointed. However, as the Authorizing Officer is responsible for all activity by Level 2 Users, it would be advisable to keep the number of users at a manageable level.

In return for being granted a license and the ability to issue certificates of sponsorship, the employer must agree to undertake a number of new duties (*e.g.*, recording certain specified information, reporting certain facts to the UK Border Agency, complying with relevant legislation and co-operating with the UK Border Agency).

As part of the licensing process, the UK Border Agency will make an on-site visit to the employer’s business premises to check that it has the systems in place to meet the new obligations that arise from being granted a license. We would therefore recommend that any employer considering applying for a license should undertake a compliance audit before filing their license application.

Licensed employers will be required to assess whether an employee meets the minimum points threshold for a certificate to be obtained. In this respect, points will be allocated for three criteria including, personal attributes, English language skills and maintenance. The attributes include sponsorship, qualifications and prospective earnings.

The individual must score a minimum of fifty points under the attributes section and ten points each for English language skills and maintenance.

It is worth noting that, although the company will be responsible for issuing certificates of sponsorship under the new system, the UK Border Agency will undertake a review of any decisions made after a certain number of certificates have been issued. If the company is found to have incorrectly issued the certificates or to have been non-compliant with any of the new obligations it could have its license downgraded or even withdrawn. If its license is withdrawn, any existing employees working under a certificate would be required to leave the UK within twenty eight days. Therefore, it is important for any company using the new system to ensure that it is fully compliant with the requirements.

A foreign national who takes up employment in the UK without authorization, in breach of the Immigration Rules is liable to removal and under provisions introduced on February 29, 2008, could be barred from re-entering the UK for a period up to ten years.

Since January 1997, UK employers faced sanctions under the Asylum and Immigration Act 1996 (“the 1996 Act”) for employing people who did not have the right to work. The 1996 Act provided a defense for UK employers who made an offer of employment conditional upon the production of one of a list of specified documents. The list included an EEA passport or other passport containing an appropriate endorsement that evidenced the foreign national’s right to work in the UK. Provided that such a document was produced, and appeared to be genuine, the UK employer would be protected from prosecution if a copy of that document was made and retained on the foreign national’s personnel file.

That law was replaced by Section 15 of the Immigration, Asylum & Nationality Act 2006, which maintains similar documentary

requirements, but requires the checks to be undertaken every twelve months. In addition, the main sanctions for non-compliance have been moved from the criminal to the civil arena. Section fifteen allows for the imposition of a civil penalty of up to £10,000 per offence that may be imposed on the company and criminal penalties of knowingly employing an illegal immigrant including unlimited fines and/or imprisonment of up to 2 years.

In order to qualify, applicants must score a minimum of fifty points for attributes which includes qualifications, expected earnings and sponsorship. In addition, applicants must score ten points for maintenance and ten points for English language ability.

Tier 2 (General)

Under Tier 2 (General), sponsors must carry out a resident labour market test (unless the job is a shortage occupation or the job is in the creative sector). In general the post must be advertised on JobCentre Plus and one other specified medium as listed in the UKBA's Codes of Practice for a 4 week period. The salary paid must also match the appropriate rate in the Codes of Practice.

For the entry clearance application, applicants must provide their original degree certificate along with evidence that they meet the English Language requirement either by passing an approved English test, being a national of a majority English speaking country or holding a degree that was taught in English and is equivalent to a UK Bachelor's degree or above. The maintenance requirement is met by the A rated sponsor certifying on the Certificate of Sponsorship that it will meet the maintenance requirement so no further evidence is required. However, if the migrant is coming to the UK with dependants then the migrant must provide personal bank statements showing personal savings of £533 for each dependant held for at least 3 months before the application date or by providing a letter from an

A-rated sponsor certifying that it will also be responsible for the dependant's maintenance in the UK.

Please note that the UK government has introduced an interim cap from July, 19 2010 on Tier 2 (General) applications. This will take the form of UKBA limiting the number of Certificates of Sponsorship that a sponsor can assign which will result in a 5% reduction on the number of visas issued for the equivalent period in 2009.

Tier 2 (Intra-Company Transfer)

This category allows multinational companies to transfer employees from their overseas organization into their UK branch or subsidiary to do a skilled job. Applicants must score a minimum of fifty points for attributes as for Tier 2 (General) and ten points for maintenance. However, applicants do not have to satisfy the English language requirement under Tier 2(ICT) until they have been in the UK for more than 3 years under the Tier 2 (ICT) category.

From April, 6 2010, the Intra-Company Transfer category was split into three sub-categories: i) Established Staff; ii) Graduate Trainee and iii) Skills Transfer.

Under the Established Staff category, this would allow a sponsoring organization to transfer an overseas employee who has been employed by an overseas company for 12 months or more (previously only 6 months prior employment was required) to transfer to the UK branch or subsidiary.

Under the Graduate Transfer category, overseas companies can transfer recent graduates to the UK branch for training as part of a structured graduate training programme. The graduate must have been employed by the overseas company for 3 months before coming to the UK. The maximum period of leave that can be granted under

Graduate Transfer is 12 months and no switching into other immigration categories is permitted.

The Skills Transfer category allows overseas companies to transfer newly recruited employees (no prior employment with overseas company required) to the UK to acquire new skills and knowledge relevant to their new role. The maximum period of leave that can be granted under Skills Transfer is 6 months and like Graduate Transfer, no switching into other immigration categories is permitted.

Any migrant coming to the UK from April 6, 2010 under the Tier 2 (Intra-Company Transfer) will no longer be able to apply for indefinite leave to remain or settlement after 5 years residency in the UK. However any migrant who is already in the UK before April 6, 2010, and extending their leave under the Intra-company Transfer category will still be able to continue on track to settlement.

Other Comments

The spouses, civil partners or unmarried partners of entrants under all of the categories reviewed in this article, except the visitor and working holiday maker categories, must satisfy the following conditions in order to enter as dependants: they must be married to the entrant or have entered into a civil partnership with the entrant or be the unmarried partner of the entrant and have been living together in a relationship akin to marriage for at least 2 years; they must intend to live with each other during their stay; and they must obtain entry clearance to enter as a dependant spouse or civil partner or unmarried partner. Dependant children under the age of eighteen are also permitted and must obtain prior entry clearance.

In addition, non -EU migrants coming to the UK to join their spouses who are British citizens or have settled status will be required to pass an English language test.

Anyone entering the UK in one of the employment-related categories, with the exception of Tier 5, Tier 1 (Post Study Work) and the Tier 2 (Intra-Company Transfer) category, will qualify, along with their dependants, to apply for permanent residency or indefinite leave to remain after completing 5 years of residence in the UK. Upon being granted permanent residency, they will be free to live and work in the UK without any restrictions.

United States of America

Executive Summary

United States law provides many solutions to help employers of foreign nationals. These range from temporary, nonimmigrant visas to permanent, immigrant visas. Often more than one solution is worth consideration. Requirements, processing times, employment eligibility, and benefits for accompanying family members vary by visa classification.

Key Government Agencies

The Department of State (“DOS”) is responsible for visa processing at American consular posts abroad.

Many visa applications first require the approval of a visa petition by the prospective US employer filed with the Citizenship and Immigration Services (“CIS”).

The Department of Labor, with the purpose of protecting American workers, is sometimes involved in the process – either before the visa petition is granted or during subsequent employer audits to audit compliance.

Inspection and admission of travelers is conducted by the Customs and Border Protection agency (“CBP”) at American ports of entry and pre-flight inspection posts.

Investigations and enforcement actions involving employers and foreign nationals is the focus of the Immigration and Customs Enforcement agency (“ICE”).

The CIS, CBP and ICE agencies are all part of the Department of Homeland Security (“DHS”).

Current Trends

Border protection activity by the CBP and enforcement of immigration-related laws that impact employers and foreign nationals by ICE increased significantly after September 11, 2001. Employers of foreign nationals unauthorized for such employment are increasingly subjected to civil and criminal penalties at both the federal and state level. The global economic downturn only heightened concerns about the impact of foreign workers on the American labor market and identity theft, precipitating greater enforcement directives by DHS. Employers should not rely on past practices for continued success.

Worksite enforcement remains a top priority for the current administration. Enforcement is not limited to ICE audits. CIS has demonstrated a pattern of increased scrutiny in its adjudication of L-1 petitions and H-1B petitions for third-party site placement. CIS has also conducted unannounced on-site visits to employers with the purpose of confirming the validity of the H-1B or L-1 work authorization. DOS has commenced verification of information contained in nonimmigrant visa petitions received from CIS. In the current environment, a company-wide immigration compliance program should be a top priority.

The heightened scrutiny of nonimmigrant visas, as well as the limited supply of immigrant visas for professionals (especially those born in India and China), makes it increasingly important for employers to consider alternative strategies.

Employers involved in mergers, acquisitions, reorganizations, etc., must also evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is especially significant as enforcement activity increases.

Although comprehensive immigration reform remains at a standstill, the immigration debate carries on throughout the country, with the business and human resource community on the watch for significant changes— both positive and negative – to affect employee mobility to the United States in the coming years.

Business Travel

B-1 Business Visitor Visa

Foreign nationals coming to the US on short-term business trips may use the B-1 business visitor visa. The B-1 authorizes a broad range of commercial and professional activity in the US, including consultations, negotiations, business meetings, conferences, and taking orders for goods made abroad. Employment in the US is not authorized.

B-1 visa applications are processed at US consular posts abroad. They are valid for a fixed amount of time – generally ten years – and may be valid for multiple or a specified number of entries. The CBP officer at the port of entry makes the determination of whether to admit and for how long.

The permitted length of stay is up to 6 months, with the possibility of stay extension applications for up to 6 months – although not generally granted – or a change to another visa status. An accompanying spouse and unmarried, minor children can be admitted under the B-2 tourist visa.

This visa requires proof of the applicant's nonimmigrant intention to depart the US, financial ability to stay in the US without seeking unauthorized employment, and the business purpose of the trip. A departure ticket is recommended.

Visa Waiver

The normal requirement of first applying to a consular post for the B-1 and B-2 visas is waived for foreign nationals of certain countries. The permitted scope of activity is the same as the B-1 and B-2 visas. The length of stay is up to ninety days only, without the possibility of a stay extension or status change. A departure ticket is required.

The following countries are presently qualified under this program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, and the United Kingdom.

The list of qualified countries changes regularly and the regularly updated list can be found at travel.state.gov/visa/temp/without/without_1990.html#countries.

Foreign national travelers coming to the United States under the Visa Waiver Program must first register on the Electronic System for Travel Authorization (“ESTA”). The electronic system determines a foreign national’s eligibility to travel to the United States under the Visa Waiver Program. If ESTA authorization is not granted, the foreign national must obtain a nonimmigrant visa from a U.S. Embassy or Consulate before traveling to the United States. As of September 8, 2010, travelers from Visa Waiver Program countries must pay [operational and travel promotion fees](#) in the amount of USD \$14 when applying for a new or renewed ESTA.

Training

J-1 Exchange Visitor Visa

The J-1 exchange visitor visa is used for a number of different purposes, including on-the-job training. The purpose is to allow foreign nationals to receiving training that is not otherwise available in their home country and that will facilitate their career when they return abroad, while at the same time affording the opportunity for them to more generally exchange information with people in the US about the two countries. A detailed training program is required.

J-1 training must be administrated by a State Department authorized program, but all of the training itself is generally provided by the sponsoring US company. Compensation for training is not required, but is permitted. This visa requires proof of the applicant's nonimmigrant intention to depart the US, financial ability to stay without seeking unauthorized employment, and the business purpose of the trip.

The length of stay for such training assignments can be for up to eighteen months, including all possible extensions. The spouse and minor, unmarried children may be issued J-2 visas. The J-2 spouse may apply for employment authorization after arrival.

Some, but not all, J-1 and J-2 exchange visitors are subject to a requirement that they return to the home country for at least 2 years at the end of the J-1 training before being eligible to immigrate or return to work under certain nonimmigrant visas. The country of residence, field of training, and source of any government funding for the training can give rise to this requirement, which often can be waived.

H-3 Trainee Visa

The H-3 nonimmigrant visa is designed for foreign nationals coming for training that is not available in the trainee's own country and that will benefit the trainee's career abroad. H-3 trainees cannot engage in productive employment, unless merely incidental and necessary to the training. They cannot be placed in a position that is in the normal operation of the business and in which local workers are regularly employed.

In practice, H-3 visa requests are more readily granted for formal, classroom-type trainings and are more likely to be denied when an on-the-job training element is included, regardless of statements that such work may be incidental and necessary. A detailed training program is required.

The maximum duration of is 2 years. The spouse and unmarried children under the age of twenty one may be issued the H-4 visa.

Although the H-3 visa does not impose specific compensation requirements, low salaries are sometimes criticized for the possibility of exploiting foreign labor, while high salaries can be criticized for possibly indicating productive labor. This visa requires proof of the applicant's nonimmigrant intention to depart, financial ability to stay without seeking unauthorized employment, and the business purpose of the trip.

B-1 Visa in lieu of H-3

Foreign nationals may be admitted to participate in H-3 type training programs using the B-1 visa, provided that they have been customarily employed by and will continue to receive a salary from the foreign company. The requirements and permitted activities are unchanged, but the duration is reduced to visits of up to 6 months. Otherwise, the B-1 visa comments provided earlier apply equally here.

Employment Assignments

L-1 Intracompany Transfer Visa

Multinational companies seeking to temporarily transfer foreign employees for assignment to US operations most often rely on the L-1. This visa is initially valid for assignments of up to 3 years, and can be extended in 2-year increments for a total period of 5 or 7 years, depending upon the nature of the US job duties. Executive and managerial-level employees can hold L-1A status for up to 7 years, whereas employees working in a capacity involving specialized knowledge have a maximum stay of 5 years under L-1B status.

The spouse and unmarried children under the age of twenty one may be issued the L-2 for the same period. The L-2 spouse may apply for employment authorization after arrival.

Qualified foreign nationals must have been outside the US for at least twelve months during the 3 years immediately preceding the L-1 visa request and during that period employed by the US petitioning employer or a company with a qualifying intra-company relationship. There are a number of relationships that qualify, but all generally rely on common majority control (e.g., parent-subsidiary, subsidiaries of a common parent, branch or representative office). The intra-company relationship need not have existed throughout the period of required employment.

Executive and managerial-level employment is generally shown through the management of subordinate employees or through the management of an essential function within the organization. Employment in a specialized knowledge capacity requires proof that the employee holds knowledge of the organization's products, services, research, equipment, techniques, management, etc., or an advanced level of expertise in the organization's processes and procedures.

Additional rules apply to companies during the first year of business operations in the US and to those who intend to place the foreign employee at a job site not controlled by the sponsoring employer (e.g., outsourcing).

Large multinationals may take advantage of special “blanket” L-1 rules for faster government processing.

H-1B Specialty Occupation Visa

US employers of foreign professionals have long relied on the H-1B visa. Status is initially valid for up to 3 years, with extensions in 3 year increments available for up to 6 years total stay. A potentially unlimited number of extensions beyond the 6 years may also be available to qualified H-1B visa holders in the immigration process. The spouse and unmarried children under the age of twenty one may be issued the H-4 for the same period.

The job offered must be in a specialty occupation, which are jobs that normally require at least a bachelor’s degree in a specific field. The foreign national must hold the required degree from an American university or the equivalent. Foreign degree, employment experience, or a combination may be considered equivalent.

Employers must promise to give H-1B professionals wages, working conditions and benefits equal to or greater than those normally offered to similar employed workers in the US. A strike or labor dispute at the place of employment may impact eligibility. Detailed recordkeeping requirements apply and government audits to ensure compliance are authorized.

Recipients of Troubled Assets Relief Program (“TARP”) funds seeking to hire H-1B employees are subject to additional recruitment and nondisplacement requirements. These provisions, primarily

affecting institutions in the financial sector, will be in effect through February of 2011.

Only a limited number of new H-1B visa petitions can be granted each fiscal year. Historically, the limited supply has been quickly exhausted. In prior years, the annual quota has been reached within the first day of the filing period. Perhaps as a result of the more stringent requirements for TARP recipients and the current state of the economy, H-1B visas for FY2011 continue to be available as of September 1, 2010.

Given the limited number of H-1B visas available, the government uses random selection to determine which requests to process – making this visa often an unreliable choice when the demand for H-1Bs far exceeds the supply. This problem does not exist for foreign professionals granted H-1B status with other employers, which are generally exempt from limits, as are H-1B requests filed by qualified educational institutions, affiliated research organizations, nonprofits and government research organizations.

H-1B1 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Singapore and Chile may take advantage of additional quota allocations and more streamlined processing rules. Although limited in number, the supply of these visas is consistently greater than demand making them more readily available. The scope of authorized work is essentially the same as the H-1B, but status is granted for up to eighteen months, with extensions in increments of up to twelve months available. The spouse and unmarried children under the age of twenty one may be issued the H-4 for the same period. This visa requires proof of the foreign national's nonimmigrant intention to depart the US.

E-3 Free Trade Agreement Visa

Prospective employers of foreign professionals who are citizens of Australia can take advantage of similar Free Trade Agreement benefits using the E-3 visa. Also limited in number, the supply of these visas too is consistently greater than demand. The scope of authorized work is similar to the H-1B, but status is granted for up to twenty four months, with extensions in increments of up to twenty four months available. The spouse and unmarried children under the age of twenty one may be issued the E-3 for the same period. The E-2 spouse may apply for employment authorization after arrival. This visa requires proof of the foreign national's nonimmigrant intention to depart the country.

TN North American Free Trade Agreement Visa

Employers of foreign professionals who are citizens of Canada and Mexico can take advantage of somewhat different Free Trade Agreement benefits using the TN visa. There are no numerical limits, so the supply of these visas is always available. The job offered must be in one of the professions covered by NAFTA, each of which has its own education or experience requirements. TN status is granted for up to thirty six months, with a potentially unlimited number of three-year extensions available. The spouse and unmarried children under the age of twenty one may be issued the TD for the same period. This visa requires proof of the foreign national's nonimmigrant intention to depart.

Some of the more commonly used professions covered by the TN include: computer systems analyst, engineer (all types), economist, lawyer, management consultant, biologist, chemist, industrial designer, accountant, and scientific technician. A complete list of the NAFTA professions can be found at www.amcits.com/nafta_professions.asp.

E-1 and E-2 Treaty Trader and Investor Visas

Foreign-owned companies doing business in the US may temporarily employ qualified foreign workers to facilitate international trade or investment activities. E visa status is granted for up to five years, with a potentially unlimited number of extensions in five-year increments. The spouse and unmarried children under the age of twenty one may be issued the E visa for the same period. The spouse may apply for employment authorization after arrival.

The list of countries with E-1 trade and E-2 investment treaties changes often and the government's regularly updated list can be found at travel.state.gov/visa/frv/reciprocity/reciprocity_3726.html. Qualifying companies must be at least 50% owned by citizens of the same treaty country. E visa status is only available to citizens of that same country. Not all countries hold treaties or agreements for both E-1 trade and E-2 investment visa status, and many countries hold neither, as can be seen on the following table:

Countries with E-1 Treaty Trader Visa Eligibility				
Argentina	Australia	Austria	Belgium	Bolivia
Bosnia & Herzegovina	Brunei	Canada	Chile	China, Republic of (Taiwan)
Colombia	Costa Rica	Croatia	Denmark	Estonia
Ethiopia	Finland	France	Germany	Greece
Honduras	Iran	Ireland	Israel	Italy
Japan	Jordan	Korea (South)	Kosovo	Latvia

Liberia	Luxembourg	Macedonia	Mexico	Montenegro
The Netherlands	Norway	Oman	Pakistan	Paraguay
The Philippines	Poland	Serbia	Singapore	Slovenia
Spain	Suriname	Sweden	Switzerland	Thailand
Togo	Turkey	The United Kingdom	Yugoslavia	

Countries with E-2 Treaty Investor Visa Eligibility

Albania	Argentina	Armenia	Australia	Austria
Azerbaijan	Bahrain	Bangladesh	Belgium	Bolivia
Bosnia & Herzegovina	Bulgaria	Cameroon	Canada	Chile
China, Republic of (Taiwan)	Colombia	Congo	(Brazzaville)	Congo (Kinshasa)
Costa Rica	Croatia	Czech Republic	Denmark	Ecuador
Egypt	Estonia	Ethiopia	Finland	France
Georgia	Germany	Grenada	Honduras	Iran
Ireland	Italy	Jamaica	Japan	Jordan

Kazakhstan	Korea (South)	Kosovo	Kyrgyzstan	Latvia
Liberia	Lithuania	Luxembourg	Macedonia	Mexico
Moldova	Mongolia	Montenegro	Morocco	The Netherlands
Norway	Oman	Pakistan	Panama	Paraguay
The Philippines	Poland	Romania	Senegal	Serbia
Singapore	Slovak	Republic	Slovenia	Spain
Sri Lanka	Suriname	Sweden	Switzerland	Thailand
Togo	Trinidad & Tobago	Tunisia	Turkey	Ukraine
The United Kingdom	Yugoslavia			

The E-1 requires proof of substantial trading activity between the US and the treaty country. The level of trade can be measured by its value, frequency and volume. Only the trade between the US and treaty country is considered, and that must account for at least 50% of the trade of the sponsoring employer. Items of trade range from goods to services, transportation, communications, data processing, finance, etc.

The E-2 requires proof of substantial capital investment that has either already been made or that is in the process of being made when the visa is requested. No minimum value threshold is set for the investment. The amount is measured in relation to the total cost of the

US business. Only funds or the value of property committed to capital investments are considered, and not the cost of operating expenses. E visa status is available to individual investors with a majority ownership interest, as well as to employees coming to work in either a supervisory role or a position involving skills essential to the venture.

Other Comments

There are many additional nonimmigrant visas less frequently used for global mobility assignments worth a brief mention. Foreign students with the F-1 visa are often granted authorization for employment related to their studies before and after graduation. The O-1 visa authorizes the employment of foreign nationals of extraordinary ability. Foreign nationals with skills in short supply in the US may be able to obtain the H-2B visa.

Immigrant visas generally take longer to obtain, but in some situations compare favorably to nonimmigrant visas. Permanent resident status is often a goal for foreign nationals and US employers rely on immigrant visas to continue to have access to their work after the limited duration of nonimmigrant visas is exhausted. Selecting a nonimmigrant visa that is consistent with a long-term immigrant visa option can be crucial. US employers are well advised to develop policies and practices that recognize the value of the immigration process to recruit and retain skilled foreign professionals, while ensuring corporate compliance with US law.

In addition to employment-based immigrant visas, immigration to the US is possible through family-based immigrant visas by qualified US citizen or permanent resident relatives.

Immigrants are often interested to later become US citizens. Naturalization to citizenship generally requires 5 years of continuous residence after immigrating, during at least half of which time the

immigrant must be physically in the country. Lengthy travel abroad, therefore, can detrimentally impact eligibility.

Further, immigrant status itself can be lost through lengthy travel abroad. US residents may be reluctant to accept assignments outside the US for this reason. It is often possible to address these concerns. The CIS can issue reentry permits to help immigrants maintain status while abroad. Further, immigrants working abroad for US owned companies or their foreign subsidiaries may qualify to protect their eligibility for citizenship. Both requests are time sensitive and should be made before the assignment abroad begins.

Further, US law generally requires immigrants to continue to file federal income tax returns even when all income is earned abroad and immigrant status can be impacted if a nonresident tax return is filed or if no US return is filed.

In the wake of September 11, 2001, greater focus is placed on registration laws requiring all foreign nationals (*e.g.*, tourists, nonimmigrants, permanent residents) to submit the CIS Alien's Change of Address notice within ten days of changing the US residence address.

Further Information

Baker & McKenzie's *United States Business Immigration Manual* provides further information about American business visas, including a broader range of nonimmigrant visas, the immigration process, and immigration-related responsibilities for employers and foreign national employees.

Bolivarian Republic of Venezuela

Executive Summary

Venezuelan immigration laws are an increasingly important and sensitive consideration when planning an investment in the country. Careful planning of employees' transfer to Venezuela is a key factor to achieve a successful business venture in Venezuela.

Compliance with Venezuelan immigration laws will safeguard companies from sanctions and penalties. While other applicable provisions exist, immigration laws are primarily in the Law on Alien Citizens and Migration which became effective in November, 2004 (the "Migration Law"). The Migration Law regulates all matters related to the admission, entry and permanence of alien citizens, as well as their rights and obligations in Venezuela, and it applies to all alien citizens, regardless of whether they are in Venezuelan territory legally or illegally. In addition to the Migration Law, the Joint Resolution (the "Resolution") issued by the Ministry of the People's Power for Internal Relations and Justice (the "Ministry of Internal Relations and Justice"), the Ministry of the People's Power for Foreign Affairs (the "Ministry of Foreign Affairs") and the Ministry of the People's Power for Labor and Social Security (the "Ministry of Labor"), have set forth the rules and procedures for the issuance of visas (Official Gazette dated January 2000). Although this Resolution was enacted and became effective in 2000, it remains in force and effect for all matters not specifically abrogated by the Migration Law. Finally, it is very important to consider as part of the immigration laws the current administrative policies, rulings and interpretations given from time to time by the officials and other authorities in charge of the relevant governmental agencies responsible for immigration matters, particularly the Ministry of Labor and the Ministry of Internal Relations and Justice.

The Venezuelan legislation provides many solutions to help employers of foreign nationals. Requirements, processing times and employment eligibility vary by visa classification.

Key Government Agencies

The Ministry of Foreign Affairs is responsible for certain visa processing at Venezuelan consular posts abroad. The Ministry of Labor, with the purpose of protecting Venezuelan workers, is involved in the process when a work visa (TR-L) is applied for. Inspection and admission of travelers is conducted by the Ministry of Internal Relations and Justice agency at Venezuelan ports of entry.

Current Trends

Under the Migration Law, employers of foreign nationals unauthorized for such employment are currently subject to administrative and criminal penalties. Employers should therefore not rely on past practices for continued success.

Employers involved in mergers, acquisitions, reorganizations, *etc.*, must evaluate the impact on the employment eligibility of foreign nationals when structuring transactions. Due diligence to evaluate the immigration-related liabilities associated with an acquisition is increasingly important as a result of the risks of penalties provided for in the Migration Law.

Business Travel

Business Visitor Visa ("TR-N")

This type of visa is granted to foreign business executives or corporate representatives that wish to enter Venezuela in order to perform financial, commercial or business activities, or any other profitable and legal activity related to their business. The TR-N is valid for 1

year and confers the right to enter and depart from Venezuela without limitation, although one may only remain in Venezuela for a continuous term of 180 days. Once such term has elapsed, the person must depart from Venezuela; otherwise, the visa will not be renewed. Notwithstanding the foregoing, the person may enter and remain for less than 180 days, as many times as needed.

The TR-N is currently granted by the Ministry of Foreign Affairs through the Venezuelan consulates in the country where the person who wishes to obtain this visa resides. Generally, each of the Venezuelan consulates is autonomous in terms of determining the procedure for the issuance of the TR-N, as well as additional documentation required for such purposes. Additionally, such consulate will analyze the purposes for which the company wishes to invite the person requiring the TR-N visa to come to Venezuela, as well as the nature of the activities to be performed by such person in Venezuela. Once the consulate has reviewed the documents listed below, it will authorize the issuance of the TR-N to the person requesting it. Once the TR-N has expired, it may be extended for an equal period, as many times as the relevant consulate may decide.

Please note that since the TR-N is not granted by the Ministry of Labor, a work permit is not required and it is not necessary to establish a corporate entity in Venezuela as an in-country sponsor, though an invitation letter from an established Venezuelan company usually is required. Furthermore, since the TR-N is a business visa, the person to whom it is granted cannot be an employee of the company for which services will be carried out in Venezuela. In this respect, the person cannot be included on the payroll of or receive benefits from such company.

Training

There is no type of visa designed exclusively for training. For on-the-job training that involves productive work, the same visa used for

most employment assignments that authorizes employment is the most likely solution.

Employment Assignments

Work Visa (“TR-L”)

This type of visa is granted to any employee, business executive or corporate representative that may be performing his/her services in Venezuela for a period of at least 1 year, under an employment agreement executed with a company in Venezuela, as explained below. It is valid for 1 year and confers the right to enter and depart from Venezuela without limitation. If the applicant will be accompanied by family (*i.e.*, husband or wife, children, parents, and father or mother-in-law), the TR-L will extend to each family members. It is important to note that even though the Resolution refers to a working period of at least 1 year, the TR-L is necessary to legally work in Venezuela even for periods of less than 1 year.

The procedure to obtain a TR-L is divided into 3 stages:

- The first stage is before the Ministry of Labor, where the purposes for which the company in Venezuela wishes to hire a foreign employee, as well as the nature of the services to be performed in Venezuela, are analyzed. At this stage, an offer of employment is made by the company before a Notary Public (the “Employment Offer”). Such document will then be considered as an employment agreement between the applicant and the company. The Ministry of Labor will review whether or not the company that will employ the services of the foreign employee will be in compliance with the restrictions for the hiring of foreign employees set forth in Article 27 of the Venezuelan Organic Labor Law (the “OLL”). According to this OLL provision, at least ninety percent of the company’s workers, both laborers and

employees, must be Venezuelans. Consequently, though certain exceptions could be obtained in a few cases, no more than ten percent of the company's workforce may be composed by foreign nationals. If the Ministry of Labor finds that all requirements are met, this first stage finalizes with the issuance of the work permit by the Ministry of Labor.

- The second stage is carried out before the Identification, Migration and Foreign Administrative Service ("SAIME") ("Servicio Administrativo Identificación, Migración y Extranjería"), where the aforementioned work permit and some additional documents are analyzed. This stage finalizes with the issuance of the authorization to the Venezuelan consulate to grant the TR-L or work visa.
- During the third stage, the applicant must appear before the Venezuelan consulate of his/her country of origin or residence. Such consulate shall issue and stamp the TR-L in the applicant's passport. Please note that each Venezuelan consulate is autonomous in determining its own procedure for stamping the visa, as well as in terms of the documentation that must be submitted for such purposes. Generally, the applicant and his/her family will be subject to medical tests and examinations at the consulate, and also a certification of police records and a cash deposit may be required.

The TR-L may be extended for an equal period once it has expired. In addition, please note that the foreign national could start validly working in Venezuela once the corresponding TR-L has been issued.

Other Comments

Other types of visas for entry into Venezuela, which were not the focus of this article, could be applied for and obtained (for example,

resident's visa). If you would like to obtain information about those, please contact us at the information provided below.

According to Article 10 of the OLL, the OLL applies to services performed or agreed upon in Venezuela, irrespective of the nationality of the employee. Consequently, when a foreign employee is transferred to work in Venezuela, especially if the work will be performed on a habitual basis in Venezuela, the provisions of the OLL and the Venezuelan labor legislation apply.

In this respect, the OLL and the Venezuelan labor and social legislation in general contain a set of mandatory conditions, contributions, obligations and labor and severance benefits that must generally be provided, complied with and paid by the employer in the benefit of his/her/its employees. The employer's failure to do so would subject the employer to potential liabilities, and it is important to obtain legal advice in connection therewith, preferably well in advance of transferring or hiring the employee to work in Venezuela. Based on recent rulings from the Venezuelan Supreme Court of Justice, there might be other legal options for companies to comply or deal with the Venezuelan labor and social security provisions while reducing the implied risks, and we encourage you to contact your Venezuelan legal counsel in order to obtain legal advice on this matter well in advance of transferring or hiring the employee to work in Venezuela.

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